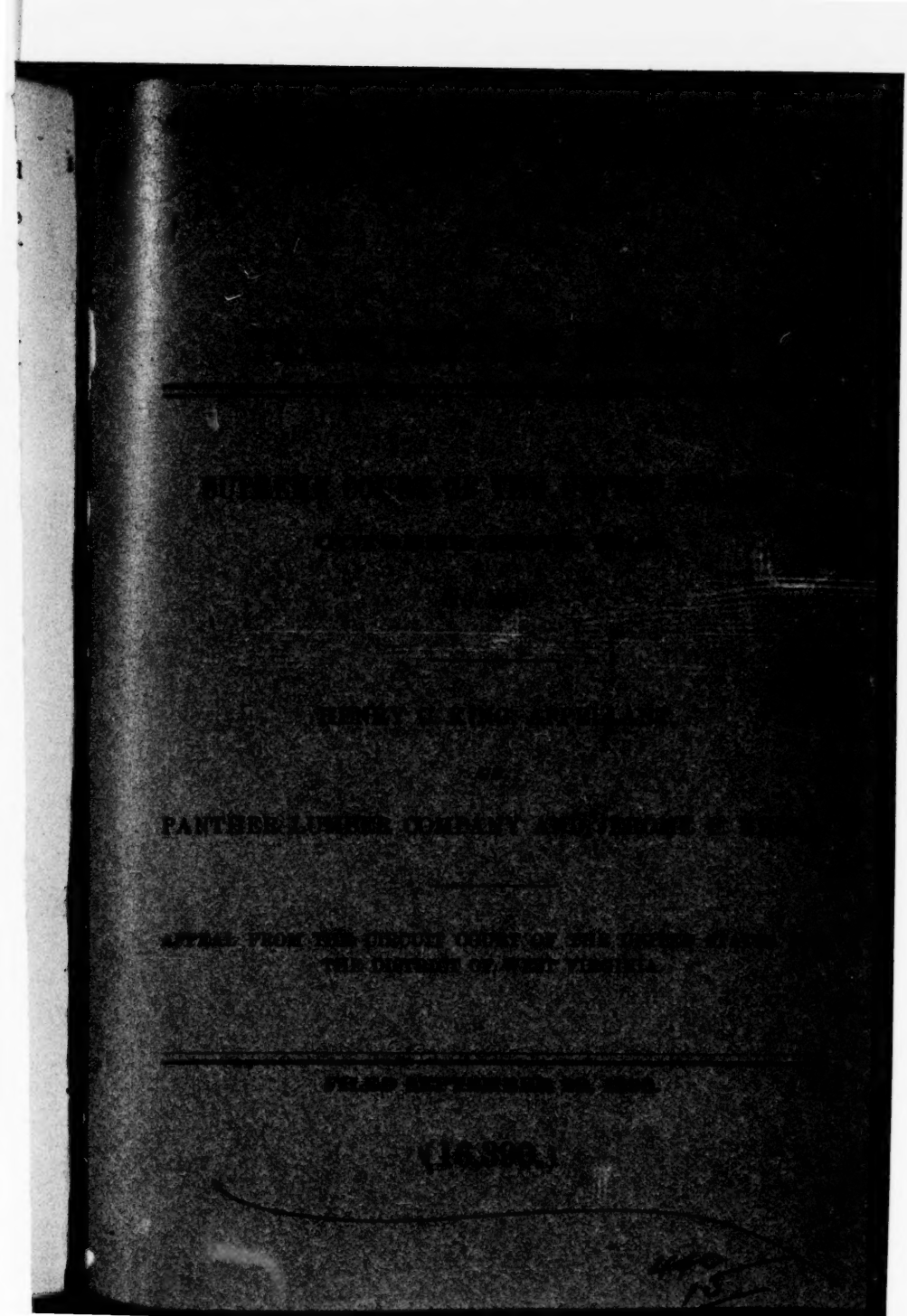

14606

(16,390.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 240.

HENRY C. KING, APPELLANT,

vs.

PANTHER LUMBER COMPANY AND JEROME P. KROLL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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1 Be it remembered that heretofore, to wit, on the 3d day of August, 1895, came Henry C. King, by counsel, and filed his bill of complaint against Panther Lumber Company, a corporation, and Jerome P. Kroll; which said bill of complaint is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia.

To the honorable judges of said court:

Humbly complaining, comes Henry C. King, a citizen and resident of the State of New York, and presents this his bill of complaint against Panther Lumber Company, a corporation organized, as complainant is advised, under the laws of West Virginia, resident and doing business in said State, and Jerome P. Kroll, a citizen and resident of said State of West Virginia, and for cause of complaint alleges:

That the value of the matter in dispute exceeds the sum of five thousand dollars exclusive of interest and costs.

That complainant is the owner in fee of a certain tract of land lying partly in said State of West Virginia, in the counties of Logan, Mingo, McDowell, and Wyoming, and partly in the State of Virginia and Kentucky, granted *to* the Commonwealth of Virginia to Robert Morris by patent dated June 23rd, 1795, and in said patent described as follows:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, about six miles from the mouth of Little War creek, a branch of Sandy river, being the corner of a survey of said Nicholas of 480,000 acres and of a survey of 320,000 acres made by said Nicholas and Jacob Kinney, and with a line of the latter S. 33 degrees W. 6,720 poles, crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at six miles, cross-

2 ing Panther creek at nine miles, and crossing several ridges to four white oaks on the northwest bank of Knox creek, and thence leaving said survey W. 3,840 poles, crossing said creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek; thence N. 8,000 poles, crossing Knox creek at about four miles, Sandy river at twelve miles, at the mouth of Turkey creek, and up said creek and the N. W. forks of same, crossing Buffalo creek, Pigeon creek, and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about 20 poles below the mouth of Gilbert's creek, and thence N. 10 degrees E. 4,450 poles, crossing Guyandotte river, several branches and some ridges to pointers; thence E. 6,620 poles, crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye, by a small branch of the same, being the N. W. corner of a survey of said Nicholas of 480,000 acres, and thence with same S. 6,800 poles,

crossing Huff's or Cain creek to the beginning, containing 500,000 acres of land.

That complainant derived title to said land from said Morris as follows: Said Robert Morris granted and conveyed said land by deed dated November 16th, 1796, to James Swan, who afterwards, and prior to 1838, departed this life in Paris, France, insolvent and heavily indebted to numerous persons, chiefly French army officers who had served with him in the war for American Independence. The said tract of land, together with other tracts belonging to said Swan, having become forfeited to the Commonwealth of Virginia, or to the literary fund thereof, for non-payment of taxes thereon, and the title thereto being vested in said Commonwealth or said literary fund, the General Assembly of said Commonwealth,
3 by an act passed and adopted March 15th, 1838, entitled "An act to amend an act entitled 'An act to amend and explain the law concerning western land titles, and for other purposes,'" released said land from all arrears of taxes and vested the title to said land in John Peter Dumas, as trustee for the benefit of the creditors of said Swan, with full power to sell and convey any part of the same.

On the 2nd day of December, 1847, said John Peter Dumas died without having disposed of said land, and by order of the circuit court of Kanawha county, Virginia (now West Virginia), made and entered on the 1st day of June, A. D. 1855, Josiah Randall was appointed trustee in the place and stead of said Dumas, and the said Josiah Randall dying September 10th, 1866, Robert E. Randall was, on the 3rd day of October, 1866, by order duly entered in said circuit court of Kanawha county, West Virginia, appointed his successor in said trust.

On the 29th day of June, 1886, said Robert E. Randall resigned his said trust and John R. Reed was duly appointed his successor in said trust by decree duly made and entered in this United States circuit court on that day, and also by order entered June 29th, 1891, in said circuit court of Kanawha county, of West Virginia. By virtue of his authority as such trustee, and the further authority of a decree rendered in this United States circuit court on the 20th day of August, 1891, and a decree rendered in the said circuit court of Kanawha county September 10th, 1891, the said John R. Reed, together with David W. Armstrong, who held a contract with said trustee for said land, conveyed said land by deed dated September 29th, 1891, to John V. Le Moyne, and said Le Moyne and wife, by deed dated December 27th, 1893, conveyed the same to complainant, as will more fully appear by reference to said grants, deeds, and orders, duly entered of record, copies of which complainant is
4 ready to furnish as this honorable court may direct or require.

That said deed from Reed, trustee, and Armstrong to complainant contained a reservation of 17,000 acres previously sold, but said reservation does not embrace any of the land upon which the acts herein complained of have been or are being done.

That said land, from the 15th day of March, 1838, until the sale of the same to complainant's grantor, Le Moyne, in 1891, was a trust

estate in the hands of a trustee appointed by the legislature of the State, and by the courts of the State, and by this court, and was during all that period in the custody of the law and the courts, and said trust was for near twenty years immediately prior to said sale, which was ordered and approved by this court, under the constant control and management of this honorable court, and when complainant purchased said land he went into the immediate actual possession and use of the same by his servants and agents and has remained up to the present time in possession of the same, except so far as portions of same are occupied adversely to him by other persons against whom he has brought actions of ejectment.

And complainant further alleges and shows unto your honors that at the June, 1894, rules of the circuit court of the United States for the western district of Virginia this complainant brought an action of ejectment against one Conley Blankenship and others to recover from them that portion of the said 500,000-acre tract that lies in Buchanan county, Virginia; which action, after a vigorous and able defense, in a trial of two weeks' duration, before the said court and a jury, has just been decided; and upon the title of plaintiff, as hereinabove set out, and upon a resurvey of said tract by W. D. Seil, made under order of said court in said action, and under the order of this court in an action herein pending between complainant and said Blankenship and others, this complainant recovered verdict and judgment for said land as located by said surveyor and claimed by this complainant, and complainant's title to said tract of land was deemed and adjudged to be valid and perfect.

That the location of said 500,000-acre tract and of the lines thereof made by said surveyor and established by the jury upon said trial is the same location that is claimed and contended for in this bill and in all the various actions of ejectment to recover said land, and suits in chancery to enjoin trespass thereon, brought and pending in this court, and embraces and includes all the land and timber that is the subject-matter of this suit.

That the portion of said tract of land upon which the acts herein complained of are being done lies wholly within the district of West Virginia.

That said land is wild and mountainous, covered in chief part by a heavy growth of valuable timber, which constitutes its principal element of value, and is practically worthless for agricultural, grazing, or other like purposes.

The complainant purchased said land chiefly on account of said timber and with the purpose of embarking in extensive operations for cutting and manufacturing of said timber, and has made and is making extensive preparations and arrangements for so cutting and manufacturing same, and has associated other capitalists with himself, and has expended large sums of money in the purchase of said land and machinery and in preparations for utilizing said timber, and designed said business as an investment for his capital, and complainant says that large profits are to be made in the cutting, sawing, and manufacturing of said timber.

That said machinery consists in part of a steam band-saw mill, capable of manufacturing 50,000 feet of lumber per day, and
6 the same is now and for a long time has been within this district ready to be set up and put in operation upon said lands as soon as the same can be done without hinderance and interruption by persons asserting, like defendants, unfounded claims to portions of said land.

That defendant Panther Lumber Company has erected and nearly completed a large saw-mill at the confluence of Tug river and Panther creek, within the boundaries of complainant's land, and, without right and without the consent and against the warning and protest of complainant, have entered upon complainant's said land and have cut down a large quantity of valuable timber, and are now cutting down with all possible speed and are preparing to saw into lumber and remove said timber, and to cut and remove other timber, and have a large force of choppers, some fifty or more in number, cutting down complainant's trees, and have already cut, as complainant is informed, upwards of 5,000 trees, of the value of at least $25,000, upon complainant's said land; that said defendant have constructed a tram road over and upon complainant's land for the distance of some two or three miles or more, for the purpose of removing complainant's timber, cut by them, and is threatening to extend the same, and is now engaged — excavating and digging up complainant's land and laying said tram road thereon.

That complainant is advised that defendants have made pretended purchases of some of said timber from various persons who have squatted upon complainant's land, claiming portions of same under pretense of title derived under quitclaim deeds from persons having no title or shadow of right to any of said land, which deeds were made in collusion and fraud and with the knowledge that no title or right was or could be acquired thereunder; and complainant is advised and believes and charges that when defendants made
7 said purchase of said timber, as aforesaid, defendants and each of them well knew and understood the shallowness of the pretense of title of said squatters, and knew that they, the defendants, did not and could not acquire any valid right whatever against this complainant; and complainant is also advised that defendants claim to be the owners of certain large tract of wild timber land within complainant's grant, which claim is wholly without right or title in law or equity.

That long prior to the formation of said corporation, as complainant is informed and believes, and at least long before the same began any business on or near said land or in any of the counties where the same is situated, complainant, by his agents, attorneys, and other representatives, was actually resident upon said land near where said corporation afterwards built said saw-mill and *were* in the actual, open, notorious, and well-known occupancy and possession of said tract of land, and complainant's ownership of said land and his possession thereof, as aforesaid, was well known to the defendant Kroll and the other persons who afterwards became the officers of said corporation, and to the knowledge of said persons complainant

was prosecuting suits and actions against numerous claimants of and trespassers upon said land, among them some of the persons, as complainant is advised, from whom defendants claim to have purchased said timber, all of which defendants well knew.

That about the time defendant Panther Lumber Company began preparation for building said saw-mill complainant, by his attorney, Maynard F. Stiles, in order to warn said company that its encroachment upon said land would be resisted, sent by U. S. mail a letter to said company, calling attention to the location of the lines of complainant's said land as he claimed them, declaring that complainant recognized no title to be superior to complainant's
8 to any timber land within said lines, adverting to the proceedings complainant had been obliged to institute to protect his land from spoliation, and expressing the hope that said defendants would not compel complainant to take like action against it; to which warning and adjuration said defendant paid no heed, but went on thereafter to do the things herein complained of; copy of which letter is filed herewith and prayed to be made part of this bill.

That about the 16th day of January last past complainant filed his bill of complaint against said Panther Lumber Company and a large number of other defendants, praying for the same relief herein asked for, and sued out a temporary restraining order inhibiting and restraining said defendant corporation from cutting timber upon said land until the further order of the court, and a rule to said defendant to show cause, upon a certain day, why injunction should not be awarded as prayed for.

That before the hearing of said rule defendant Panther Lumber Company, by its counsel, came into court and, without notice to this complainant and upon representations, as complainant is informed and believes, that said defendant only desired to cut a few trees to be used about the construction of its said saw-mill, secured an order to be made suspending said injunction till further order of the court, upon the said defendant giving bond in $3,000.00.

That thereafter complainant, upon being made aware that said company was about to resume the cutting of timber upon an extensive scale, notified defendant of his intention to move this court to reinstate said injunction, and complainant, by his counsel, and defendant, by its counsel, came before this court upon said notice, but the said motion was not heard at that time on account of the illness of the judge then presiding; whereupon, defendant declaring
9 that no timber of consequence was being cut by it, and it being understood that none would be cut until said motion could be heard, said motion was continued till the same could be heard and acted upon; but no hearing has ever been had thereon, nor has any demurrer or answer to said bill been offered or filed, and complainant, in order to separate the controversies between him and these defendants from the controversies between him and the other defendants in said former suit and for general convenience, dismisses said bill so far as the same relates to defendants herein and now presents his bill of complaint against them.

That prior to the building of said saw-mill by Panther Lumber Company and before said company has begun business upon or near said land or elsewhere complainant had instituted actions of ejectment in this honorable court against a large number of persons living in and about said Panther Creek from whom, as complainant is advised, defendant has made pretended purchases of timber, and said actions are still pending in this court, and complainant has, cotemporaneously herewith, instituted a like action of ejectment in this honorable court against these defendants and others to recover possession of the land withheld from complainant.

That complainant's said tract of land is traversed by the Guyandotte and Tug rivers, the water-shed between which separates said tract into two separate and distince bodies of land, so far as concerns the utilization of the timber thereon; that upon and along said Tug river the principal body of timber, compactly situate and adapted to the extensive operation for which complainant designed the same, is the timber situated upon said Panther creek and its tributaries.

That complainant has associated with himself other business men and capitalists for the purpose of cutting, manufacturing, and marketing said timber upon an extensive scale; and complainant says that if said defendants be permitted to cut and remove said timber from said land that said land will be wholly unfitted and made valueless and useless to complainant for the purposes for which he purchased and intended the same, and complainant's business will be interfered with and his plans for utilizing the same thwarted, and far-reaching confusion will result to complainant's plans and purposes with regard to said land, and he will suffer, not only the loss of the value of the standing timber, but the loss of the profits to be derived from cutting and sawing and marketing same, which profits cannot be exactly ascertained or estimated and would not, as complainant is advised, be recoverable in an action for damages for said trespass.

That said corporation is the owner, as complainant is informed, of large bodies of land or timber upon said Tug river and upon the headwaters of said Panther creek above and outside and beyond the lines of complainant's land; and complainant is advised that said defendant is in no manner dependent upon any of the timber claimed by it under the aforesaid pretended purchases from squatters upon complainant's land for the operation of said saw-mill.

That defendant Jerome P. Kroll also claims to be the owner, by virtue of pretended purchases, of certain timber upon complainant's land, made in the same manner as the purchases claimed to have been made by defendant Panther Lumber Company, and is, as complainant is advised, cutting, removing, and selling said timber to said company, of which corporation he is the business agent and manager.

That complainant has already sustained great damages by the acts above complained of and has been put to great trouble and expense thereby, and if said parties shall continue to cut and remove

said timber from complainant's land, as they are now doing
11 and threatening to do, or shall remove or dispose of any of the timber already cut by them, complainant will suffer great, incalculable, and irreparable loss, damage, and injury.

And complainant says that he has for said acts and injuries no plain, speedy, and adequate remedy at law, and that unless this court will interpose in his behalf complainant will be put to a multiplicity of suits in and about said matter and to the great cost and inconvenience, as well of the defendants as of complainant, and that if this court will take cognizance of this cause and will hear and determine the same, complete justice between said parties can be done in this one suit, so far as it can be done at all, and a multiplicity of actions and great trouble and expense be avoided and great and irreparable injury to complainant be prevented.

That this bill and the relief herein sought is ancillary to and in aid of the actions of ejectment against said defendants and others aforesaid, and complainant says that if there should be delay in the awarding of said injunction complainant will suffer irreparable injury from such delay.

Wherefore, and to the end that complainant may have the relief in the premises to which he is entitled, your complainant prays that he have leave to file this bill in this honorable court, and that process of subpœna issue thereon to said Panther Lumber Company, a corporation, and to said Jerome P. Kroll, requiring them and each of them to appear and answer the allegations of this bill; that each of said defendants be required to disclose the quantity and value of all the timber cut by it or him upon said land and heretofore disposed of, and of all matters relating thereto, and that an accounting be had therefor; that an order be made and entered herein enjoining
and restraining said defendants and each of them, their serv-
12 ants and agents, from cutting any timber upon complainant's tract of land mentioned in this bill, and from removing, converting, or in any manner disposing of any of the timber heretofore cut by said defendants or either of them or purchased from any other person and now lying and being upon said land, and from digging up or excavating complainant's land, and from constructing any tramway thereon, and that complainant may have such other, further, and general relief as the nature of his cause may require and to your honors may seem equitable and proper.

And complainant will ever pray, &c.

HENRY C. KING,
By MAYNARD F. STILES,
E. L. BUTTRICK, AND
H. K. SHUMATE,
His Soliciters.

UNITED STATES OF AMERICA, }
District of West Virginia. }

Maynard F. Stiles, being duly sworn, doth say that he is one of the solicitors of Henry C. King, the complainant in the foregoing bill, and knows the contents thereof, and that the allegations therein

contained are true of his own knowledge, except those made on information or belief, and those he believes to be true; that this verification is made by said solicitor instead of by said complainant for the reason that the matters stated are within the knowledge of affiant, and that complainant is not within said State of West Virginia or where said bill may be conveniently verified by him.

MAYNARD F. STILES.

Taken, subscribed, and sworn to before me this 3rd day of August, 1895.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

13 EXHIBIT H. C. K. No. 1.

Robert Brooke, Esquire, governor of the Commonwealth of Virginia, to all whom these presents shall come, Greeting:

Know ye, by virtue of 11 land office treasury warrants Nos. 652, 653, 654, 655, 658, 659, 643, 645, 647, 648, and issued the 28th Aug't, 1794, & No. 619, issued 18th September, 1794, there is granted by the said Commonwealth, unto Robert Morris assignee of Wilson Cary Nicholas a certain tract or parcel of land containing 500,000 acres by survey bearing date the 28th day of October, 1794, lying and being in the counties of Wythe and Russell the greater part thereof in the former, on Sandy and Guyandotte rivers and the waters thereof and is bounded as followeth, to wit:

Beginning at 2 poplars and 2 chestnut trees on a branch of Guyandotte river and about 6 miles from the mouth of Little War creek a branch of Sandy river being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenney and with a line of the latter S. 33° W. 6,720 poles crossing a dividing ridge and down War creek to the mouth crossing Sandy river at 6 miles, crossing Panther creek at 9 miles and crossing several ridges to 4 white oaks on the northwest bank of Knox creek and thence leaving said survey W. 3,840 pos. crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to 3 poplars and a sugar tree by a small branch of Knox creek, thence N. 8,000 pos. crossing Knox creek at about 4 miles, Sandy river at 12 miles, the mouth of Turkey creek and up said creek and the northwest forks of the same crossing Buffaloe creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilberts creek twice a branch of Guyandotte to 3 sugar trees in a bottom of said river and about 20
14 poles below the mouth of Gilberts creek, thence N. 10 E. 4,450 pos. crossing Guyandotte river several small branches and some ridges to pointers, thence E. 6,620 pos. crossing Guyandotte river and several branches thereof to 3 sugar trees and a buckeye by a small branch of the same, being the northwest corner of a

survey of said Nicholas of 480,000 acres, thence with the same S. 6,800 poles crossing Huffs or Cain creek to the beginning.

But it is always to be understood that the survey upon which this grant is founded includes 4,000 acres which having a preference by law to the warrants and rights upon which Robert Morris' survey is founded liverty is reserved that the said 4,000 acres shall be firm and valid and shall have the same effect and may be carried into grant or grants and this grant shall be no bar in either law or equity to the confirmation of the title as before mentioned and reserved with its appurtenances.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Morris and his heirs forever.

In witness whereof, the said Robert Brooke, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 23d day of June, in the year of our Lord one thousand 795, and of the Commonwealth the 19th.

[SEAL.] ROBERT BROOKE.

Book 31, page 613.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office.

Witness my hand and seal of office this 9th day of November, 1894.

W. R. GAINES, [SEAL.]
Register of the Land Office.

15 EXHIBIT H. C. K. No. 2.

This indenture made this sixteenth day of November in the year of our Lord one thousand seven hundred and ninety-five between Robert Morris of the city of Philadelphia in the State of Pennsylvania, Esquire, and Mary his wife of the one part and James Swan of Dorchester in the county of Norfolk and State of Massachusetts, Esquire, of the other part: Whereas by a deed-pole or instrument in writing, dated the sixteenth day of July last, the said Robert Morris for the considerations therein mentioned did grant and confirm unto the said James Swan and to his heirs and assigns all his, the said Robert Morris's rights, title and interest of and in all and singular the tract or piece of land hereinafter more particularly mentioned and the said Robert Morris did thereby assign unto the said James Swan his heirs and assigns a certain deed-pole dated the eleventh day of December last and all the benefit and advantage of the several covenants therein contained on the part of James Brackenridge, Wilson Cary Nicholas, Joseph Higbiee and Charles Higbiee therein named to be observed and the said Robert Morris did thereby covenant that he would at any time hereafter upon the reasonable request and at the proper costs and charges in the law of the said James Swan his heirs or assigns make execute and acknowledge all

such further deed or deeds conveyances and assurances in the law for the better and more perfect granting assigning conveying and assuring all and singular the premises thereby granted and assigned unto and to the use of the said James Swan, his heirs and assigns as he or they or his or their counsel learned in the law should or might reasonably advise, devise or require and especially to deliver to the said James Swan the original patent of the said lands with a transfer or conveyance of the same in favor of him the said James Swan his heirs and assigns as in and by the said deed-pole
16 or instrument in writing on reference being thereto had will more fully appear.: Now this indenture witnesseth that in pursuance of the aforesaid covenant of the said Robert Morris and also for and in consideration of five shillings lawful money of Pennsylvania to him in hand paid by the said James Swan at or before the sealing and delivery hereof the receipt whereof is hereby acknowledged, they the said Robert Morris and Mary his wife have granted bargained and sold, aliened, released, enfeoffed and confirmed, and by these presents do grant, bargain and sell, alien, release, enfeoff and conform unto the said James Swan and to his heirs and assigns, a certain tract or parcel of land containing five hundred thousand acres by survey bearing date the twenty-eighth day of October one thousand seven hundred and ninety-four, lying and being in the counties of Wythe and Russell (the greater part thereof in the former) on Sandy and Guyandotte rivers and the waters thereof and is bounded as followeth, to wit: Beginning at two poplars and two chestnut trees on a branch of Guyandott river and about six miles from the mouth of little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas's survey of four hundred and eighty thousand acres and of a survey of three hundred and twenty thousand acres made for said Nicholas and Jacob Kinney and with a line of the latter south thirty-three degrees, west six thousand seven hundred and twenty poles crossing a dividing ridge and down War creek to the mouth crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oaks on the northwest bank of Knox's creek, and thence leaving said survey west three thousand eight hundred and forty poles, crossing a creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three
17 poplars and a sugar tree by a small branch of Knox's creek, thence north eight thousand poles crossing Knox creek at about four miles, Sandy river at twelve miles, at the mouth of Turkey creek, and up said creek and the northwest forks of the same crossing Buffaloe creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilberts creek twice a branch of Guyandott to three sugar trees in a bottom of said river and about twenty poles below the mouth of Gilbert's creek and thence north ten degrees east four thousand four hundred and fifty poles crossing Guyandott river, several small branches and some ridges to pointers thence east six thousand six hundred and twenty poles, crossing Guyandott river and several branches thereof to three sugar trees

and a buckeye by a small branch of the same, being the northwest corner of a survey of said Nicholas's of four hundred and eighty thousand acres, and thence with the same south six thousand and eight hundred poles, crossing Huff's or Cain creek to the beginning. (But it is always to be understood that the survey upon which this grant is founded includes four thousand acres, which having a preference by law to the warrants and rights upon which Robert Morris's survey is founded, liberty is reserved that the said four thousand acres shall be firm and valid and shall have the same effect and may be carried into grant or grants, and this grant shall be no bar in either law or equity to the confirmation of the title as before mentioned and reserved.) Together with all and singular the woods, underwoods, waters, water-courses, advantages, rights, privileges and appurtenances thereunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof and also all the estate, right, title, interest, property claim and demand whatsoever of them the said Robert Morris and Mary his wife or either of them of, in, to, or out of the said tract or parcel of
18 land and premises. To have and to hold the said tract or parcel of land and premises hereby granted with the appurtenances unto the said James Swan, his heirs and assigns, to the only proper use, benefit and behoof of the said James Swan, his heirs and assigns forever. And the said Robert Morris doth hereby for himself, his heirs executors and administrators covenant and promise to and with the said James Swan, his heirs and assigns, that, he, the said Robert Morris and his heirs all and singular the tract or parcel of land and premises hereby granted with the appurtenances unto the said James Swan, his heirs and assigns, against him the said Robert Morris and his heirs and against all and every person or persons claiming or to claim by, from, through or under him, them or any of them, shall and will by these presents warrant and forever defend.

In witness whereof the parties to these presents their hands and seals have hereunto set the day and year first above written.

ROBERT MORRIS. [L. S.]
MARY MORRIS. [L. S.]

Sealed and delivered in the presence of us—
MATTH. CLARKSON.
THOMAS HALL.

Received the day of the date of the above written indenture the full consideration money above mentioned.

Witness my hand.

ROBERT MORRIS.

Witnesses:
MATTH. CLARKSON.
THOMAS HALL.

On the sixteenth day of November, anno Domini 1795, before me, Matthew Clarkson, Esq., mayor of the city of Philadelphia, came the above-named Rob't. Morris and Mary, his wife, and acknowl-

edged the above written indenture to be their and each of their act and deed, and desired the same may be recorded as such, the said Mary voluntarily consenting thereto, she being of full age, by me thereon examined, separate and apart from her said husband, and the contents thereof first made known unto her.

In testimony whereof I, the said mayor, have hereunto set
19 my hand and caused the seal of the mayoralty of the said city to be affixed this sixteenth day of November, in the year of our Lord one thousand seven hundred and ninety-five.

[L. S.] MATTH. CLARKSON, *Mayor.*

Memorandum to be Construed and Taken as Part of the within Written Indenture as if the Same was Therein Inserted.

The within-named Robert Morris for himself, his heirs, executors and administrators, doth covenant and promise to and with the within-named James Swan his heirs and assigns that he the said Robert Morris and his heirs the tract or parcel of land and premises within granted unto him the said James Swan, his heirs and assigns, against him the said Robert Morris and his heirs and against all and every other person and persons whatsoever claiming or to claim by, from or under him, them or any of them or by, from, through or under any other person or persons whomsoever shall and will warrant and hereby forever defend.

In witness whereof the said Robert Morris has hereunto set his hand and seal this twenty-fourth day of November one thousand seven hundred and ninety-five.

ROB'T MORRIS.

Witness- hereto:
GARRETT COTTRINGER.
JOHN JONES.

PHILADELPHIA, *scl:*

Before me, Matthew Clarkson, Esquire, mayor of the city of Philadelphia, came John Jones, one of the subscribing witnesses to the endorsement on this deed, and did declare that he was present and did see the said Robert Morris execute the same in due form of law, and that the name Robert Morris subscribed thereto is of the said Robert Morris's own proper handwriting, and that the names Garrett Cottringer and John Jones, also subscribed thereto, are of the proper handwriting of the declarant and of the other witness who
20 was present at the time of the execution of the said endorsement by the said Rob't Morris.

In testimony whereof I have hereunto set my hand and caused the seal of the mayoralty of the said city to be affixed this twenty-fifty day of November, one thousand seven hundred and ninety-five.

[L. S.] MATTHEW CLARKSON, *Mayor.*

VIRGINIA, *To wit:*

At a general court held at the capitol, in the city of Richmond, the sixteenth day of November, 1796.

This indenture, together with the certificate of Matthew Clarkson, mayor of the city of Philadelphia, thereunder written, and the memorandum and the certificate of the said Matthew thereon endorsed, on the motion of James Swan, a party thereto, was ordered to be recorded.

Teste: I. BROWN, *Cl. Cur.*

A copy.

Teste: N. P. HOWARD, *Cl'k.*

March 4th, 1841.

VIRGINIA, *To wit:*

I, Nathaniel Pope Howard, clerk of the general court of Virginia, do hereby certify that the writing in this sheet of paper contained, down to the signature "I. Brown, cl. cur.," is a true transcript from the record of deeds presented in the office of the said court.

In testimony whereof I have hereto signed my name and affixed the seal of the said general court, at Richmond, in Virginia aforesaid, this eleventh day of November, in the year one thousand eight hundred and forty-three.

[SEAL.] N. P. HOWARD.

VIRGINIA, *To wit:*

I, Philip Norborne Nicholas, one of the judges of the general court of Virginia, do hereby certify that Nathaniel Pope Howard, whose name is subscribed to the attestation at the bottom of
21 the last-preceding page, is the clerk of the said general court, appointed and qualified according to law, and that his said attestation is in due form.

Given under my hand, at the city of Richmond, in the said Commonwealth of Virginia, this eleventh day of November, in the year one thousand eight hundred and forty-three.

P. N. NICHOLAS.

VIRGINIA, *To wit:*

I, James McDowell, governor of the State aforesaid, do hereby certify and make known unto all whom it may concern that Philip Norborne Nicholas, whose name is subscribed to a certificate subjoined to one of the annexed documents, is and was at the time of subscribing the same one of the judges of the general court of Virginia, duly appointed and qualified according to law, and that Stafford N. Parker, whose name is subscribed to a certificate subjoined to another document hereto annexed, is and was at the time of subscribing the same register of the land office of Virginia, duly appointed and qualified according to law. Wherefore to all the official acts of the said judge of the general court and register of the

land office respectively full faith, credit, and authority are due and ought to be given.

[SEAL.]

No. 1398. Ne varietur. F. Garderá, le crad'r assem'r, No. 18 Rue Virenne.

In testimony whereof I have subscribed my name and caused the great seal of the State to be affixed hereunto. Done at the city of Richmond the thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-three, and of the Commonwealth the sixty-eighth.

JAS. McDOWELL.

By the governor:

WM. H. RICHARDSON,
Sec'y Com'r & Keeper of the Seal.

22 CITY OF PARIS, }
Kingdom of France. }

I, the undersigned, consul of the United States of America for the city of Paris, do hereby certify that the signature Jas. McDowell to this instrument is to me well known to be truly that of Mr. James McDowell, governor of the State of Virginia, United States of America, and that to all acts by him so signed full faith and credit are due in court and thereout.

In testimony whereof I have hereunto set my hand and seal of office this 2d day of April, in the year of our Lord 1846.

[SEAL.] ROBERT WALSH, *U. S. Consul.*

Le Ministre des Affaires Etrangéres Certifie ecritable la signature W. M. Walsh.

Paris le 2 Avril 1846.

Par autorisation du Ministre.

Le Chef du burau de la Chancellerie.

[SEAL.] DE LAMELLEE.

Conformably to the indenture executed this day by me and Mr. T. T. M. Schmit Thornfeld, I have delivered the above.

Paris, twenty-ninth September, one thousand eight hundred and forty-six.

JOHN PETER DUMAS.

AMERICAN CONSULATE, PARIS.

The signature of John Peter Dumas to this instrument duly authenticated at this consulate.

In witness whereof I have hereunto set my hand and seal of office this 30 day of September, in the year of our Lord 1846.

[SEAL.] ROBERT WALSH, *U. S. Consul.*

23 Le Ministre des Affaires Etrangéres Certifie ecritable la signature.

Paris le 20 Fevrier 1847.

Par autorisation du Ministre.

Le Chef du burau de la Chancellerie.

[SEAL.] JERSEUZY.

(Some French, a translation of which would be:)

"Executed this 4th May, 1847."

[SEAL.] EUGENE PENRION.

EXHIBIT H. C. K. No. 3.

At a circuit court held for Kanawha county, Virginia, now West Virginia, at the court-house thereof, on the 1st day of June, 1855.

EMILE DUMAS & CHARLES DUMAS, Comp'ts,
vs.
D'HUC DE MOSEGNON & Others, Def'ts. } In Chancery.

This cause came on to be heard on the 1st day of June, 1855, on the bill and exhibits, the answer of D'Huc de Mosignon & Henrietta, his wife, Henry J. P. Dumas, A. Lubbert, F. E. Puget & Augusta C. M. A. Puget, his wife, A. F. B. D. Aubignose, & L. F. M. Brodard & exhibits; the answer of Robert E. Randall, guardian *ad litem* of six minor children & heirs of Henry Dumas, dec'd, son and heir of J. P. Dumas, dec'd, whose names are unknown, and upon an order of publication as to the other defendants, duly executed according to law, and was argued by counsel; and it appearing to the court by the 17th & 18th sections of the act of the General Assembly of Virginia passed the 15th day of March, 1838, entitled "An act to amend an act entitled An act to amend and explain the laws concerning Western land titles, & for other purposes," that certain lands of which James Swann, dec'd, was owner by title, whether legal or
24 equitable, and which had been forfeited to the Commonwealth, was transferred to and vested in John P. Dumas in trust for the use and benefit of the creditors of James Swann, dec'd, and that the said J. P. Dumas was thereby authorized to hold said land for the use and benefit *if* said creditors, with power to sell and convey the same, and that said transfer of title was subject to the rights of *bona fide* occupants whose rights were secured by any pre-existing law; and it also appearing that the said John P. Dumas, since the passage of said act, has departed this life, and that to execute the trusts and duties imposed by said act it is necessary to substitute a trustee in the place and stead of said John P. Dumas; whereupon it is adjudged, ordered, and decreed that Josiah Randall be, and he is hereby, appointed trustee for the creditors aforesaid in the place and stead of John P. Dumas, dec'd, and that as such trustee he stand seized of all the land of James Swann, dec'd, which was transferred to and vested in said John P. Dumas by virtue of the act aforesaid, except such portions thereof as may have been sold and conveyed by the said J. P. Dumas, dec'd, in his lifetime in the execution of the trust; that he also have power and authority to do and perform every act and thing in relation to said lands which the said J. P. Dumas could do or perform concerning said lands if he were in life, including those lands which the said J. P. Dumas sold or contracted to sell in his lifetime, as well as those not sold or disposed

of by him; and that the said Randall shall be fully and completely invested with all the power, authority, and rights in the premises which in anywise appertained to the said John P. Dumas under and by virtue of the act aforesaid, and that the said Randall be in all respects substituted in the place and stead of said J. P. Dumas, as trustee as aforesaid, subject to all the obligations, limitations, and duties which were by said act imposed on said J. P. Dumas, dec'd;
25 and it is further adjudged, ordered, and decreed that the heirs of said John P. Dumas shall convey to the said Josiah Randall, as trustee, as aforesaid, all rights, title, claim, or interest, legal or equitable, which they may hold in said lands so conveyed to their ancestor by the act aforesaid, and they being absentees, six of them minors, and a deed directly from the adults only being difficult and probably impracticable to procure; whereupon, under the circumstances, Isaac N. Smith is hereby appointed a commissioner on behalf of said heirs to convey from them the lands aforesaid by deed to said Josiah Randall, trustee, as aforesaid, and acknowledge the same in due and proper form for record; and it is further ordered that the said Josiah Randall do make to this court annual reports of his proceedings in the premises.

I, H. K. Black, clerk of the circuit court for Kanawha county, West Virginia, do hereby certify that the foregoing is a true transcript of a decree now in my lawful custody.

Given under my hand and seal of said court this 3d day of July, 1895.

[SEAL.] H. K. BLACK, *Clerk.*

EXHIBIT H. C. K. No. 4.

This deed made this 30th day of May in the year eighteen hundred and fifty-six between Gustavus Dresslet & Susanne his wife the said Susanne being daughter & sole heir of Henrietta D. Huc de Monsegon dec'd who was a daughter of John P. Dumas C. S. Dumas & six other minors whose names are unknown children of Henry Dumas dec'd who was a son of John P. Dumas Louise S. Dumas Emile Dumas & Charles Dumas the three last the children of John P. Dumas of the first part and Josiah Randall of Philadelphia of the second part.

26 Witnesseth whereas by a decree rendered at its spring term 1855 the circuit court of Kanawha county appointed Josiah Randall of Philadelphia trustee for the creditors of James Swann in the place of John P. Dumas dec'd who by an act of the legislature of Virginia passed March 15th 1838 had been appointed trustee for said creditors with power to hold rent sell or otherwise dispose of certain large tracts of land in the State of Virginia owned by James Swann now deceased and by the same decree ordered that the heirs of said John P. Dumas deceased should convey all their interest in said lands as heirs of said John P. Dumas to the said Josiah Randall and appointed Isaac N. Smith a special commissioner for that purpose, all of which appears from the papers in the cause of Emile

& Charles Dumas *vs.* Louise S. Dumas & others now on file in said court.

Now therefore this deed witnesseth that: the said parties of the first part by Isaac N. Smith special commissioner as aforesaid do grant unto the said Josiah Randall as trustee as aforesaid all right title claim or interest legal or equitable which they may hold in the lands so conveyed to their ancestor John P. Dumas by the said act of the legislature passed March 15th 1838.

Witness the following signatures and seals:

GUSTAVUS DRESSLER, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*
SUSANNE DRESSLER, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*
JEAN P. DUMAS, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*
C. S. DUMAS, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r,*
ISAAC N. SMITH, *Sp'l Com'r.* [SEAL.]
For Six Minor Children of Henry Dumas.
LOUISE T. DUMAS, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*
CHARLES DUMAS, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*
EMILE DUMAS, [SEAL.]
By ISAAC N. SMITH, *Sp'l Com'r.*

27 KANAWHA COUNTY COURT,
CLERK'S OFFICE, 10*th May*, 1856.

This deed was this day presented to me and duly acknowledged by Isaac N. Smith as commissioner for and on behalf of the parties grantors thereto & thereupon admitted to record.

Teste: JOHN DRYDEN, *D.*,
For A. W. QUARRIER, *Cl'k.*

I hereby certify that the foregoing is a true copy from the records of my office.

June 17th, 1895.

Attest:

[SEAL.] J. W. GOSHORN,
Clerk Kanawha County Court.

EXHIBIT H. C. K. No. 5.

At a circuit court held at Kanawha county, at the court-house thereof, on Wednesday, the third day of October, 1866.

EMILE and CHARLES DUMAS, Complainants,
vs.
D'HUC D'MONSIGNON and Others, Defendants.

JOSIAH RANDALL, Trustee, Complainant,
vs.
GUSTAVUS DRESSLER and Others, Defendants.

E. LACOUSURE, Complainant,
vs.
JOSIAH RANDALL, Trustee, and Others, Defendants.

} In Chancery.

This the third day of October, A. D. 1866, the petition of Ann Randall and Henry M. Phillips, executors of the last will and testament and codicils thereto annexed of Josiah Randall, deceased, trustee of the lands of the estate of James Swan, deceased, for the use and benefit of the creditors of said Swan, was presented and ordered to be filed; and thereupon these causes came on to be further heard upon the proceedings heretofore had therein and the petition aforesaid and was argued by counsel.

28 It appearing to the court that since the last term of the court the said Josiah Randall has departed this life, to wit, on the 10th day of September, 1866, and that to execute the trusts and duties imposed upon said trustee by the decree of this court entered the first day of June, 1855, it is necessary to substitute and appoint a trustee in the place and stead of Josiah Randall, deceased, as trustee, as aforesaid:

Wherefore it is adjudged, ordered, and decreed that Robert E. Randall be, and he is hereby, in all respects substituted and appointed trustee in the place and stead of Josiah Randall, deceased, as trustee, as aforesaid; and that the said Robert E. Randall be, and he is hereby, fully and completely invested with all the rights, powers, and authority in the premises which in any way appertained to the said Josiah Randall as trustee, and subject to all the obligations, limitations, and duties which were imposed upon the said Josiah Randall as trustee, as aforesaid; and it is further ordered that the above suit in the name of the said Josiah Randall, trustee, be revived in the name of the said Robert E. Randall, as trustee.

And it is further ordered that Henry C. McWhorter, Esq., one of the commissioners of this court, to take, state, settle, and report the accounts of the said Josiah Randall, deceased, as such trustee to the time of his death.

STATE OF WEST VIRGINIA, }
County of Kanawha, } *ss:*

I, H. K. Black, clerk of the circuit court for said county and State, do certify that the foregoing is a true copy of a decree of record in my office.

Witness my hand and the seal of said court this 24th day of April, A. D. 1894.

[SEAL.]

H. K. BLACK,
Clerk of said Court.

29 EXHIBIT H. C. K. No. 6.

At a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, in said district, on the 29th day of June, 1886, the following order was made and entered of record, to wit:

EMILE and CHARLES DUMAS
vs.
D'HUC D'MONSIGNON *et al.*

and

JOSIAH RANDALL, Trustee,
vs.
GUSTAVE DRESSLER *et al.*

and

E. LACOUTURE
vs.
JOSIAH RANDALL, Trustee.

} In Equity.

Robert E. Randall having on the 26th day of June, 1886, tendered his resignation as trustee of the James Swann estate on account of the state of his health being such as to forbid his giving the trust his personal attention, which resignation is hereby received and accepted by the court:

On motion of Samuel J. Randall, one of the heirs of Josiah Randall, dec'd, and the estate of Josiah Randall, dec'd, being a creditor of the said Swann estate, and with the approval and sanction of S. L. M. Barlow, by W. S. Laidley, attorney, a large creditor of the said Swann estate, and there being no objection thereto, John R. Read, of the city of Philadelphia, in the State of Pennsylvania, is hereby substituted and appointed trustee of the said James Swann estate in the room and stead of the said Robert E. Randall, trustee, resigned; and the said John R. Read, as such trustee, is
30 hereby substituted to all the rights, powers, duties, and responsibilities which were imposed upon the said Robert E. Randall, trustee.

And it appearing to the court that no bond has heretofore been required of the former trustees, no bond will now be required of the said John R. Read, trustee, before acting under this appointment as such trustee; but the right is hereby expressly reserved by this court, upon application of any creditor of the said Swann estate or other party interested, to require a bond of the said John R. Read, trustee;

And it further appearing to the court that E. L. Buttrick, who was heretofore appointed to investigate the condition of the lands belonging to the Swann estate, has filed his report herein, and from which report it appears to this court that further investigation and report should speedily be made, and that some steps should be immediately taken to protect the said estate, it is therefore ordered that said E. L. Buttrick do continue the investigation of the condition of said lands, and that he do make report thereof to this court, and that he do take such steps as in his opinion may be necessary to protect and preserve the said estate.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 29th day of June, 1886, in the equity cause of C. &. E. Dumas *v.* D'Huc D. Monsignon *et al.*, therein pending.

Given under my hand and the seal of said court, at
[SEAL.] Parkersburg, in said district, this 11th day of August, 1896.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

31 EXHIBITS H. C. K. Nos. 7 & 8.

At a circuit court held for Kanawha county, West Virginia, at the court-house thereof, on the 10th day of September, 1891.

EMILE & CHARLES DUMAS
against
DE HUC DE MOSIGNON *et al.*

JOSIAH RANDALL, Trustee,
against
GUSTAVE DRESSLER *et als.*

E. LACONTRE
against
JOSIAH RANDALL, Trustee.

} In Chancery.

This day came John R. Read, who has been duly appointed trustee of the estate of James Swan, deceased, and in behalf of the creditors interested in said estate and represented in the above consolidated suits, and prays the court for a confirmation of the sale of whatever interest, whether legal or equitable, the said estate may

have in a tract of 500,000 acres granted to Robert Norris by the Commonwealth of Virginia June 23rd, 1795, now located in the counties of Wyoming, Logan, and McDowell, in the State of West Virginia, and the counties of Buchanan, in the State of Virginia, and Pike county, in the State of Kentucky, to David W. Armstrong, of the city of New York; and it appearing from the records of the proceedings in said suits in this court that under the acts of Congress pertaining to the removal of causes from the State courts to the circuit court of the United States that S. L. M. Barlow, one of the parties to said suits, has removed to the circuit court of the United States for the district of West Virginia so much of said suits as represents his interest therein, and said court has jurisdiction of the same; and it further appearing to the court that John R. Read has been duly appointed trustee of said estate of James Swan in said circuit court of the United States, and that he has reported
32 to said court said sale of the interest of said estate in said tract of 500,000 acres to David W. Armstrong, and the same has been confirmed by said court, which order of confirmation is herewith presented; and it appearing to the court that such confirmation was made upon the petition of the creditors of said estate, it is ordered that said order of confirmation be recorded in this court with this order, and this court doth ratify and confirm said sale so made by said trustee and authorize and direct him to execute and deliver to the said Armstrong a good and sufficient deed of conveyance of said tract to the said Armstrong, subject to the exceptions contained in said order of the circuit court of the United States in due form of law.

And all orders heretofore made in the above-entitled suits directing said tract of land or any part or interest in it to be sold at public sale be, and the same are hereby, set aside and annulled.

At a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, in said district, on the 20th day of August, 1891, the following order was made and entered of record, to wit:

DUMAS
vs.
DE HUC DE MOSIGNON *et al.*

LACONTRE
vs.
RANDALL *et al.*

and

RANDALL
vs.
DRESSLER *et al.*

This day came John R. Read, trustee, heretofore appointed by this court in the above-entitled suits, for and on behalf of the creditors of James Swan, deceased, and presented his report of the sale of all the interests of James Swan's estate in and to a tract of 500,000 acres

of land granted to Robert Norris by the Commonwealth of Virginia June 23rd, 1795, lying partly in the counties of Wyoming and McDowell, in the State of West Virginia, partly in Buchanan county, Virginia, and partly in Pike county, Kentucky, to David W.
33 Armstrong, of New York. And whereas the said Read reports that he believes that in the present condition of said tract that it would be for the best interest of said estate to sell and convey the same for the consideration named in said report; and whereas the majority of the creditors of James Swan's estate, known as the (French creditors) have by their attorney, Leon D. Geneste, of Washington, D. C., and the estate of Josiah Randall, deceased, one of the largest creditors of said estate, by C. C. Luncaster, his attorney, has filed a petition praying the court to confirm said sale so reported by said trustee, and upon notice to W. S. Laidley, administrator *de bonis non* of the estate in West Virginia of S. L. M. Barlow, deceased, and as attorney of the personal heirs of said estate and as attorney for John Ogle and others, has been duly notified of an application to this court to confirm said sale to be this day made:

It is adjudged, ordered, and decreed that the sale of said tract of 500,000 acres, excepting therefrom 17,000 acres heretofore sold or contracted to be sold by Robert E. Randall, late trustee of said estate of James Swan, to Fongeray and Smith, and so much of said tract, if any as interlock- with a grant by the Commonwealth of Virginia to William McClary for 100,000 acres lying between Tug river and the waters of Coal river, in Logan and Boone counties, be, and the same is hereby, confirmed, and said trustee is hereby authorized and empowered to convey to D. W. Armstrong all the interest of said estate of James Swan in and to said tract of 500,000 acres of land, subject to the exceptions above named.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy of an order made and entered in the above-styled causes on the 20th day of August, 1891, now of record and on file
34 in my said office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Parkersburg, in said district, on this the 25th day of August, A. D. 1891.

[Seal of the Cir. Court of U. States, D. W. Va.]

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

A true copy from the record.

In testimony whereof I, H. K. Black, clerk of the circuit court for Kanawha county, West Virginia, have hereunto set my hand and affixed the seal of said court, at the court-house of said county, this 12th day of October, 1895, and in the 33rd year of the State.

[SEAL.] H. K. BLACK, *Clerk.*

Fee for copy, $1.75.

EXHIBIT H. C. K. No. 9.

This indenture, made this the twenty-ninth day of September eighteen hundred and ninety-one between John R. Read, trustee, of the city of Philadelphia, State of Pennsylvania, party of the first part, and David W. Armstrong of the city, county and State of New York, party of the second part, and John V. Le Moyne, of the city of Baltimore, State of Maryland, party of the third part.

Whereas said John R. Read is trustee for the creditors of James Swan, deceased, duly appointed by decree of the United States circuit court for the district of West Virginia, entered on the twenty-ninth day of June eighteen hundred and eighty-six, in the case of Barlow *et al. vs.* Monsignon *et al.*, therein pending, and by decree entered in the circuit court of Kanawha county, West Virginia, on the 29th day of June, 1891, in the case of Dumas *et al. vs.* Mon-
35 signon *et al.*, therein pending, and by decree of the circuit court of Wythe county, Virginia, on the — day of March, 1890, in the case of Randall's Executors *vs.* Puget *et al.*, therein pending, and as such trustee is the successor of John Peter Dumas, trustee, appointed by an act of the legislature of the State of Virginia, approved on the 15th day of March, A. D. 1838, and the owner of a certain 500,000-acre tract of land hereinafter more particularly described;

And whereas said Read, trustee, did make and execute an agreement with David W. Armstrong, of New York city, bearing date the 10th day of June, 1891, for the sale of said tract of land with certain exceptions, therein mentioned, and hereinafter more particularly described, which contract of sale has been duly confirmed by decrees entered in the aforesaid cases in the circuit court of the United States for the district of West Virginia, on the 20th day of August, 1891, in the circuit court of Kanawha county, West Virginia, on the 10th day of September, 1891.

And whereas the said Armstrong has assigned said contract of sale to John V. Le Moyne of Baltimore, Maryland, and the said Le Moyne has paid the purchase-money therein specified:

Now therefore, this indenture witnesseth that said John R. Read, trustee as aforesaid, and under and pursuant to the authority and direction given him by the several orders entered in the aforesaid cases in the circuit court of United States for the district of West Virginia and in the circuit court of Kanawha county and Wythe county, and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other good and valuable considerations, and the said David W. Armstrong, joining herein to give additional evidence of his aforesaid assignment, do hereby sell, grant, release and convey with special warranty of title unto the said
36 John V. Le Moyne, all of the right, title and interest of every and whatever kind and character vested in said John R. Read, as such trustee, or which he is authorized and directed by the orders and decrees aforesaid as such trustee to sell, and all the right, title and interest vested in said David W. Armstrong under and by

virtue of the aforesaid contract of purchase, in and to all that certain tract of land lying partly in Wyoming and other counties in the State of West Virginia, and partly in Buchanan county, Virginia, and in Pike county, Kentucky, containing 500,000 acres, more or less, being the same tract of land patented to Robert Morris by the Commonwealth of Virginia on the 23rd day of June, 1795, and bounded and described as follows: Beginning at two poplars and two chestnuts on a branch of Guyandotte and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres and one of 320,000 acres of Nicholas and Jacob Kenney, and with a line of the latter, south 33° west 6,720 poles, crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at 6 miles, crossing Panther creek at 9 miles, and crossing several ridges to four white oaks on the northwest bank of Knox creek, and thence leaving said survey west 3,840 poles crossing a creek and some of the branches thereof, and along the spurs of a ridge dividing the waters of the said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek, thence north 8,000 poles, crossing Knox creek at about 4 miles, Sandy river at 12 miles, the mouth of Turkey creek and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilberts creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about 20 poles below the mouth of
37 Gilberts creek and thence north 10° east 4,450 poles, crossing Guyandotte river several small branches and some ridges to pointers; thence east 6,620 poles, crossing Guyandotte river and several branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of a survey of said Nicholas of 480,000 acres, and thence with the same south 6,800 poles, crossing Huffs of Cain's creek to the beginning.

There is however, excepted and reserved from this conveyance, all that part of said tract of land and interest therein which has been heretofore conveyed by Robert E. Randall, trustee, the predecessor of said John R. Read, trustee, to Christian F. Smith and R. J. Fougeray, trustees, by deed dated October 10th, 1885, recorded in the clerk's office of the county court of Wyoming county in Deed Book "I," page 356, etc., supposed to convey 13,000 acres; also to Christian F. Smith, trustee, by deed dated October 10th, 1885, and recorded in the clerk's office of the county court of Wyoming county in Deed Book "I," page 349, etc., supposed to convey 3,000 acres, and also Samuel Baugh, by deed dated October 10th, 1885, and recorded in the clerk's office of the county court of Wyoming county in Deed Book "I," page 352, etc., supposed to convey 1,000 acres.

There is also excepted and reserved from this conveyance any interlock that may exist between said 500,000-acre tract of land hereby conveyed and another certain tract of land belonging to said Read, trustee, as aforesaid, containing 100,000 acres, patented to William McClery by the Commonwealth of Virginia on the 21st day of January, 1796.

It is not thought that any such interlock exists, but if by a proper running of the lines of said two surveys it shall appear that they conflict such interlock is not intended to be and is not hereby conveyed.

38 In witness whereof, John R. Read, trustee, and David W. Armstrong have hereunto set their hands and seals this twenty-ninth day of September, 1891.

DAVID W. ARMSTRONG. [SEAL.]
JOHN R. READ, *Trustee.* [L. S.]

STATE OF PENNSYLVANIA, }
County of Philadelphia. }

Personally appeared before me, a notary public in and for said State and county, John R. Read, trustee, whose name is signed to the foregoing deed, bearing date the twenty-ninth day of September, 1891, and acknowledged the same to be his act and deed as trustee as therein recited.

Given under my hand and notarial seal this third day of October, 1891.

WM. WHARTON SMITH, [SEAL.]
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } *To wit:*

Personally appeared before me, a notary public in and for said State, city, and county, David W. Armstrong, whose name is signed to the foregoing deed, bearing date the 29th day of September, 1891, and acknowledged the same to be his act and deed as therein recited.

Given under my hand and notarial seal this 30th day of September, 1891.

[SEAL.] ELLA F. BRAMAN,
Notary Public.

WEST VIRGINIA:

In Logan County Court Clerk's Office, Oct. 28th, 1891.

The foregoing deed was this day duly admitted to record.

Teste: S. S. ALTIZER, *Clerk.*

39 WEST VIRGINIA:

In the County Court Clerk's Office of Wyoming County, the 17th Day of November, 1891.

The foregoing writing, bearing date on the 29th day of September, 1891, with the accompanying and annexed certificates of acknowledgment, was this day received in this office for record and is accordingly thereto admitted.

Teste: J. O. SANDERS, *Clerk.*

WEST VIRGINIA:

In McDowell County Court Clerk's Office, the 22nd Day of December, 1891.

The foregoing writing, together with the annexed certificates of acknowledgment, was presented to me in said office for record, and the same is this day accordingly thereto admitted.

Teste: W. F. TABOR, *Deputy*,
For W. P. PAYNE, *Clerk*.

WEST VIRGINIA:

In McDowell County Court Clerk's Office, March 19th, 1895.

The foregoing deed was this day presented to me in said office for record, and thereupon, together with the annexed certificate, duly recorded in Deed Book 19, page 334.

Teste: J. F. JOHNSON, *D.*,
For W. P. PAYNE, *Clerk*.

STATE OF WEST VIRGINIA, }
McDowell County, } *To wit:*

I, J. F. Johnson, deputy for W. P. Payne, clerk of the county court of said county, do certify that the foregoing is a true and perfect transcript from the records of my office, as appears of record therein, except certificates of recordation in other offices.

In witness whereof I have hereunto set my hand and affixed
40 the seal of said court this 19th day of March, 1895.

J. F. JOHNSON, *D.*,
[SEAL.] For W. P. PAYNE, *Clerk*.

EXHIBIT H. C. K. No. 10.

This indenture, made this 27th day of December, in the year eighteen hundred and ninety-three (1893) between John V. Le Moyne and Julia M. Le Moyne, his wife, of the county of Baltimore and State of Maryland, of the first part, and Henry Clay King, of the city and State of New York, of the second part witnesseth, that in consideration of one dollar, in hand paid, the receipt whereof is hereby acknowledged, and for other valuable consideration paid, the said party of the first part does hereby remise, release and quit-claim to said party of the second part, his heirs and assigns, all the right, title, interest, or claim of the said party of the first part in and to the following-described tract or parcel of land, described as containing five hundred thousand acres, granted to Robert Morris by the Commonwealth of Virginia by patent, dated the twenty-third (23d) day of June, 1795, and lying partly within the present boundaries of the State of Kentucky and partly in the States of Virginia and West Virginia, which said tract of five hundred thousand acres is more particularly described in the said patent as follows, to wit: Beginning at two poplars and two chestnut trees on a branch of Guyandotte river and about six (6) miles from the mouth

of Little War creek, a branch of Sandy river, being a corner of a survey of Wilson Cary Nicholas of 480,000 acres, and survey of 320,000 acres made for said Nicholas and Jacob Kenney and with a line of the latter S. 33° W. 6,720 poles, crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at six (6) miles, crossing Panther creek at nine (9) miles and
41 crossing several ridges to four (4) white oaks, on the northwest bank of Knox's creek, and thence leaving said survey, west 3,840 poles, crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peters creek, a branch of Sandy river, to three (3) poplars and a sugar tree, by a small branch of Knox's creek, thence north 8,000 poles crossing Knox's creek at about four (4) miles, Sandy river at twelve (12) miles, the mouth of Turkey creek, and up said creek and the northwest fork of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers, and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about 20 poles below the mouth of Gilbert's creek, and thence north 10° E. 4,450 poles, crossing Guyandott river, several small branches, and some ridges to pointers, thence E. 6,620 poles crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of a survey of said Nicholas of 480,000 acres and thence with the same S. 6,800 poles crossing Huff's or Cain creek to the beginning;

To have and to hold all the interest and title of said party of the first part in & to the aforesaid lands, and each and every part thereof and all the right, title and interest of every description, legal or equitable of the party of the first part, in or to the same, and all the rights, privileges and appurtenances thereto in anywise appertaining or belonging unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN V. LE MOYNE. [SEAL.]
JULIA M. LE MOYNE. [SEAL.]

In presence of—
GEO. W. TREADWELL.
WM. H. JONES.

42 STATE OF MARYLAND, *City of Baltimore,* } *ss:*

I, Wm. H. Jones, a notary public in and for said city, in the State aforesaid, do hereby certify that the foregoing deed bearing date on the 27th day of December, 1893, was this day produced to me in my office, in the city aforesaid, by John V. Le Moyne and Julia M. Le Moyne, personally known to me and known to me to be the persons whose names are signed thereto and who are therein described and who executed the same, and the said John V. Le Moyne acknowledged that he executed and delivered said deed and consents

that the same may be recorded; and the contents and effect of the said instrument being by me fully explained to the said Julia M. Le Moyne privily and separately and apart from her husband, said John V. Le Moyne, she thereupon declared that she did freely and voluntarily execute and deliver the same and does not wish to retract it, and consents that the same might be recorded.

Witness my hand and official seal this 29th day of December, A. D. 1893.

WM. H. JONES,
Notary Public.

[SEAL.]

WEST VIRGINIA:

In Logan County Court Clerk's Office, Jan. 17th, 1894.

The foregoing deed was this day duly admitted to record in my office aforesaid.

Teste: S. S. ALTIZER, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, Jan. 23rd, 1894.

This day the foregoing deed was presented in said office and, together with the certificate annexed, admitted to record.

Teste: JO. HIBBETTS, *Clerk.*

43 WEST VIRGINIA:

In McDowell County Court Clerk's Office, March 12th, 1894.

The foregoing deed was this day presented to me in said office for record, and thereupon, together with the annexed certificate, duly recorded in Deed Book 18, page 421.

Teste: J. F. JOHNSON, *Deputy,*
For W. P. PAYNE, *Clerk.*

STATE OF WEST VIRGINIA, *McDowell County,* } *To wit:*

I, J. F. Johnson, deputy for W. P. Payne, clerk of the county court of said county, do hereby certify that the foregoing is a true and perfect copy from the records of my office, as appears of record therein.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 11th day of March, 1895.

J. F. JOHNSON, *D.,*
For W. P. PAYNE, *Clerk.*

[SEAL.]

EXHIBIT H. C. K. No. 11.

M. F. Stiles, attorney for Henry C. King.

DOTSON, W. VA., *Dec. 26th*, 1894.

Panther Creek Lumber Company, Dotson, W. Va.

GENTLEMEN: In view of the professed ignorance of the location of the lines of the Robert Morris 500,000-acre survey on the part of persons who for years have depredated upon that tract of land, and inasmuch as you are new comers in this neighborhood and
44 have located within the boundaries of said survey, with the lines whereof you may not be familiar, I deem it but just to us both that you be advised of our position in the premises.

One of our lines crosses Tug river at War creek and from that point runs N. 33° E. about six miles to the beginning corner of the survey, and from said crossing of Tug river S. 33° W. about fifteen miles. From the beginning corner the line runs north about twenty miles. Westwardly from this corner as far as Beach creek and somewhat beyond, on Tug river, we recognize no title to any timber land as being superior to that of Henry C. King.

We have been put to the unpleasant necessity of suing out injunction against a great many persons who have been cutting timber upon said land, and would not like to enlarge the list and hope there will be no need to do so.

The purpose of this communication is that in your business arrangements you may give to the matters herein contained such consideration as may be due to them.

I am, very resp'ly yours,

MAYNARD F. STILES,
Att'y for Henry C. King.

45 *Answer of Panther Lumber Company.*

(Filed August 3rd, 1895.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING, Complainant,
against
PANTHER LUMBER COMPANY and Others, Defendants. } In Chancery.

I. The defendant Panther Lumber Company answers and says that if the injunction sought by the plaintiff be granted it will work a great hardship upon the defendant and those connected with it; and, praying the patience and consideration of the court, the defendant hopes to set forth a state of facts which will show the plaintiff's proceedings to be most inequitable and unfounded.

II. In the year 1888 and before there was any development of the section in which the real estate is situated which is the subject

of litigation, and long before the branch railway of the Norfolk & Western railroad was run through there, affording facilities for development, one J. P. Kroll, acting as the agent of Hiram W. Sibley and Isaac Bearinger, two men of large means, purchased in McDowell county, West Virginia, about 12,000 acres of land and about 60,000 standing trees at the cost of about $200,000. This property lies practically all in the same section and was all paid for. To prevent trouble in the title, by and understanding between the said Sibley and Bearinger the conveyances for this property were all taken in the name of said Sibley. These properties were purchased for the purpose of the manufacture of the timber into lumber; so the said Sibley, Bearinger, Kroll, John E. Mills, and William L. Thompson applied to the secretary of the State of West Virginia for a charter, which was granted them on the 25th day of July, 1894, and by this charter was created the defendant corporation, Panther Lumber Company, with a paid-up capital of $280,000 (the maximum capital, $300,000). These persons were all the stockholders there *is* in said corporation, and a copy of the charter is filed as part of this answer, marked "Z."

46 III. The said defendant further says that the said Sibley, Bearinger, and Mills, being the monied men of the concern, subscribed all the land and timber in McDowell county, W. Va., to the defendant corporation, and same has been accepted by it through the action of the board of directors of said company, and the conveyances for this property, which are by four deeds, have been made; a copy of one of them for the immediate land whereon the machinery is located is filed as part of this answer, marked "deed;" two others from Sibley are in the hands of the president of defendant company to be delivered and one in the hands of Mills, copies of all of which can be filed in a short time with this record.

IV. The confluence of Panther creek with Tug river being the point most central to the property of the plaintiff, this point has been selected for the operations of the said company, and they began erecting structures for their plant in September, 1894; have also recently built a bridge costing $6,000.00 across the Tug river, leading to the Norfolk and Western railway, which is but a short distance from their operations, and upon which they expect to ship their lumber. The defendant company has purchased the most improved machinery and appliances, partially built and constructed a railroad upon and into its land for the distance of four miles, and has now expended not less than $100,000 on its plant, and when it begins operations will have made an outlay thereon of not less than $200,000, much of which expenditures and outlays had been contracted for prior to the 26th day of December, 1894, which is the date of the communication spoken of in complainant's bill as having been sent through the mails; and respondent avers that the agents and attorney of complainant were frequently passing and repassing about the premises, and respondent charges that they knew all about these expenditures done and those contemplated for months before they made any objections. When all these purchases of land and timber were made by the agent of the said Sibley & Bearinger they

had able and experienced lawyers to examine the titles to the properties which they purchased, and they were pronounced
47 good and perfect.

VI. The plaintiff says that he purchased the land to which he asserts title chiefly on account of the timber on it, with the purpose of embarking extensive operations for the purpose of cutting and manufacturing of said timber, and has made and is making extensive preparations and arrangements for so cutting and manufacturing same; that he has purchased valuable and costly machine- therefor; that he has associated "other capitalists" with himself; that he has expended large sums of money in the purchase of said land and machinery and in the preparation for utilizing said timber; that he has designed said business as an investment for his capital; that large profits are to be made in the cutting, sawing, and manufacturing said timber.

VII. Defendant denies that the said plaintiff has ever made any *bona fide* entry in said land, nor has he ever brought or placed any machinery on it anywhere, or attempted in any manner to utilize the timber. The defendant is informed that the only entry on or possession of the land taken by him was that about sixteen months ago the agents of the plaintiff either built a log house or repaired one already built and some of his employees have lived therein, but this was in the State of Virginia.

VIII. Said defendant denies all of these allegations set out in the bill and above reiterated; says that he believes the title of the plaintiff to be a pretended one, and that he has never incurred the outlay pretended in his bill.

IX. Defendant denied that the plaintiff has any title to the land as asserted by him.

X. Defendant supposes that it is true that the Commonwealth of Virginia did grant to Robert Morris in the year 1795 a large tract of land. It may be true (but defendant denies it) that Robert Morris afterwards conveyed this land to one James Swan. It is admitted in the plaintiff's bill that the title of Swan to this land became forfeited and vested in the Commonwealth of Virginia or officers of the literary fund. This was prior to the year 1838, for by refer-
48 ence to an act of the General Assembley of Virginia passed March the 15th, 1838, all the lands owned by James Swan lying west of the Alleghany mountains, and which were forfeited, were transferred to and vested in one John Peter Dumas, a citizen and resident of Paris, France, but it was expressly declared by the assembly that their action was in nowise to affect any parcels of said land then in the actual possession of any *bona fide* occupant holding mediately or immediately under grants from the Commonwe*l*ath of Virginia upon which taxes have been paid by such occupant and not forfeited, but confirmed the title of such occupants.

XI. Defendant is advised that the General Assembly of Virginia possessed no power or authority to transfer title and vest same in John Peter Dumas, as it atte*pm*ted to do, and the act is therefore null and void. Furthermore, defendant avers and charges that the

said James Swan had before his death, and therefore before this act of the assembly, parted by conveyance with any right or title he ever had in said Morris grant. Defendant further charges that any title that might have been conferred upon the said John Peter Dumas became forfeited and escheated to the State of West Virginia — was con-ituted a State. Defendant further avers and charges that after the State of West Virginia was formed that all title to the said Robert Morris tract, by whomsoever held, became forfeited to the State of West Virginia and was unredeemable and not redeemed; that this forfeiture was under express provisions of the constitution of West Virginia and similar statutes of the same State, and that if this land were redeemable or ever redeemed (which is denied) it must be subject to the provisions of article XIII of the constitution of West Virginia and similar statutes of that State—that is to say, all title to all lands which prior to that provision of the constitution were forfeited or treated as forfeited, waste, and unappropriated, or escheated to the State of Virginia or West Virginia, or purchased by either of said States at sales made for the non-payment of taxes and become irredeemable, or thereafter forfeited or treated as
49 forfeited or escheated to West Virginia or purchased by it and become irredeemable, &c., was vested in three classes of persons in the order following:

1st. Those who shall have had actual continuous possession of under color or claims of title for ten years, and who, under whom they claim, have paid State taxes thereon for any five years during such possession.

2nd. Those who have title or claim to, regularly derived, mediately or immediately, from or under a grant from the Commonwealth of Virginia or West Virginia, and have paid all State taxes charged or chargeable for five successive years after the year 1865.

3d. Those who have title or claim to, regularly derived, mediately or immediately, from or under a grant from the Commonwealth of Virginia or West Virginia, and have paid all States taxes charged or chargeable thereon for five successive years. The defendant herewith files as part of this answer the certificate of the auditor of public accounts of West Va., marked "auditor," showing forfeiture of said land and failure to redeem same.

XII. Defendant further avers and charges that the Robert Morris land never was surveyed, cannot now be surveyed and located or identified; the pretended lines thereof cannot be traced nor will they close, and defendant denies that any of the lands or timber which it owns lies within the supposed boundaries of the Robert Morris survey. It is true, respondent knows, that by the lines claimed by complainant that some of its lands do lie within them, but defendant disputes their correctness, and avers that it does not lie within the ingenuity of man to locate them.

XIV. The complainant charges that defendants have made pretended purchases of some of said timber from various persons who have "squatted" upon complainant's land, claiming portions of same under a pretense of the title derived under quitclaims deeds from persons having no title or shadow of right to any of said lands;

that their conveyances thereto were made in collusion and fraud, with the knowledge that no title or right was or could be acquired thereunder; that complainant is advised and believes and charges that when defendants made said pretended purchases of said timber as aforesaid defendants and each of them well knew and understood the shallowness of the pretense of the title of said squatters and knows that they, the defendants, did not and could not acquire any valid right whatever. Respondent avers that there is not one word or syllable of this allegation true. Complainant sees proper to apply the term of "squatter" to people who have spent their lives on these poor lands and who, with their ancestors before them, have occupied them for generations and who lived and toiled there and died there without any knowledge of the complainant's pretended title. Respondent has already mentioned how these lands were acquired by it and those under which it claims, and it now here avers that the title to all the lands and timber owned by Sibley and Bearinger and John E. Mills and which now belong to defendant is perfect and superior to any title which complainant may have or claim; that the titles are derived mediately or immediately from the States of Virginia and West Virginia, and that the agents and tenants of said Sibley (who has held title to these lands until recently) and those under whom Sibley claimed have had for many years—some for sixty years and none less than ten years—open, notorious, contoinuous, exclusive possession, and therefore adversary and hostile to any one else—certainly adversary to the complainant's title, literally unknown to them—and have paid all taxes thereon required by law. To demonstrate the falsehood of the complainant's bill your respondent will set out and trace to the Commonwealth the tract upon which its mills and machinery (its plant) is being erected. This is a tract of seventy acres, with a perfect chain of title as follows:

50

Commonwealth of Virginia
to
Thomas Luster and Abner Luster.

Grant issued 22nd day of October, 1827, a copy of which is filed as part of this answer, marked "Y."

51

Abner Luster
to
Thomas Luster.

Deed dated 24th day of April, 1848, which includes the interest (one-half) of this 70 acres, a copy of which is filed as part of this answer, marked "X."

Thomas Lester and wife
to
Leffage Lester.

Deed dated 24th day of February, 1876, a copy of which is filed as part of this answer, marked "W."

Leffage Lester and wife
to
Adam Cline.

Deed dated 27th day of January, 1880, a copy of which is filed as part of this answer, marked " V."

Adam Cline
to
H. W. Cline.

Deed dated the 28th day of July, 1883, a copy of which is filed as part of this answer, marked " U."

H. W. Cline
to
Amanda Coleman.

Deed dated 20th day of June, 1885, a copy of which is filed as part of this answer, marked " S."

John D. Payne, trustee,
to
W. P. Payne and G. W. Harman.

Deed dated 8th day of March, 188–, a copy of which is filed as part of this answer, marked " R."

W. P. Payne and G. W. Harman
to
52 Hiram W. Sibley.

Deed dated 2nd day of April, 1890, a copy of which is filed as part of this answer, marked " Q."

XV. Adjoining this is about 100 acres from a tract of 244 acres granted by the Commonwealth of Virginia June 3rd, 1856, to Eli Bailey; conveyed by Eli Bailey to Melvin Bailey Oct. 1st, 1883; conveyed by Melvin Bailey to James Bailey 26th May, 1886, and by James Bailey to Hiram W. Sibley 27th Jan'y, 1894. The grant and copies of these conveyances respectively are filed as part of this answer, marked P, O, N, M. Adjoining, also, is a tract of 35 acres granted by the Commonwealth of Virginia to Thomas Lester Aug. 2nd, 1852, copy of grant filed as part of this answer, marked L; conveyed *to* Thomas Lester to Leffage Lester by Exhibit W; conveyed by Leffage Lester to Amanda Coleman 20th Dec., 1884, copy of which is filed as part of this answer, marked K; sold under decree of the circuit court of McDowell Co., W. Va., in the chancery cause of D. O. Baldwein & Co., plaintiffs, and Joseph Coleman and *al.*, defendant-, purchased by W. P. Payne and George W. Harman (see transcript of record of this chancery cause, filed as part of this answer, marked J); conveyed by John D. Payne, special commissioner, to W. P. Payne and George W. Harman 1st of July, 1889, a copy of which is filed as part of this answer, marked I, and conveyed

by W. P. Payne and G. W. Harman to Hiram W. Sibley, 22nd day of April, 1890. See Exhibit Q.

XVI. Thus it will be seen that the three tracts—the 70 acres, 35 acres, and part of the 244 acres upon which the defendant's plant is placed—are traced back by the conveyances to the Commonwealth of Virginia. Thomas Lester, one of the pioneer residents of that place, was residing upon the 70-acres tract when it was granted to him, in 1827, and continued to reside on it and the 35-acre tract until his death, a period of more than 65 years, said Thomas dying in the year 1892. A spot of the 35 acres has been used as the burial ground of the citizens of that community for more than fifty years. See the affidavit of Leffage Lester submitted with this answer. This affidavit, and others submitted with this answer, shows the
53 character of the possession of lands owned by the defendant for many years past—long enough to tell the right of any adversary claimant outside the question of title.

XVII. The defendant is advised that this proceeding will not be transformed into an action of ejectment, and therefore it has exhibited a perfect title for present purposes only to the lands which are the sites of its operations.

XVIII. Defendant begs to exhibit copies of conveyances to Sibley for lands and timber in the vicinity off of which it expects to get timber for its uses, with a title equally as good as the old ones exhibited, to wit:

XIX. N. B. Dotson and wife, Andrew Allen and wife, Adam Bailey, Crockett Bailey and wife, Samuel Steel and wife, Frederick Cline, Joseph H. Stacy and wife, Malinda Blackenship, William H. Coleman, Leffrage Lester, Harrison W. Cline, Ode Roberts and wife, John F. Stacy, A. J. Stacy.

XX. Defendant avers by this proceeding his business has been seriously interfered with, and that a large number of his employés have been thrown out of business and defendant greatly damaged thereby. Defendant has about 150 mechanics and laborers employed on its lumber plan*d* and 100 men in getting out timber, and has about 5 million feet now ready felled for the mills, which timber is not on the lands claimed by plaintiff. Recently the defendant has cut and prepared from three to five thousand saw-logs, which is about one million feet, on what is known as the Cox land, which has been conveyed in fee to defendant and which is within the boundary claimed by complainant—that is, the portion of it on which the timber is *sut*, and that is all the defendant has cut on land claimed by complainant, except what was cut before the first injunction was granted, around about the mill and premise*d*, for building purposes. It would be ruinous to all persons interested to let this timber lie in the log, unmanufactured, to await the termination of this litigation, and the defendant is advised that whatever action may be taken by the court on the injunction prayed for, that privilege will be given to allow these logs manufactures into lumber.

54 XXI. As a*p*propos to the statement made by defendant here of the hardship imposed upon settlers and land-

owners incident to this proceeding, defendant prays to exhibit as part of this answer, marked H, a circular letter, signed by the attorney of plaintiff, dated July 9th, 1894, and about that time distributed, and which is in the words and figures following:

To the residents of Virginia and Kentucky living upon lands within the boundaries of the Robert Morris 500,000-acre patent and the George Keith Taylor 187,000-acre patent, granted by the State of Virginia in 1795 and 1796 respectively:

There is to be a survey made of these patents under order of the court, and in order that the citizens claiming lands within the boundaries of these surveys may be fully informed as to the position and intentions of the owners of the surveys the following statement is made:

It is not the wish to disturb any valid titles to lands held by the citizens. It is not the wish to disturb them in their homes or to contest what is commonly known as old patents, where the people have been in open and notorious possession for the requisite period provided by law; neither is it the wish to cause them expense and trouble by summoning them into court, which, to many, would be a great hardship, and in some instances would possibly result in depriving them of their land, because of their inability to bear the expense of going to court. It is, however, impossible in many cases, among so large a number, to distinguish as to the particular piece of land, and hence in some instances when parties claiming land for which in part they may have titles which we do not wish to contest, and in part titles, such, for instance, as what are known as "court rights," which we shall contest, we may be compelled to cite them into court without being able to name the particular land; but wherever this — done we are ready at all times to
55 quitclaim to them such lands as under the law they now rightfully hold; and should there be awarded by inadvertence or neglect on their part any judgment against them for such lands, we will in all such cases correct the error upon their making it known to us. It is the desire to cause as little trouble as possible. It is certainly to the best interests of all the people to have these titles cleared up, that they may be free from fear of future molestation, and that capital may come into the country to develop it for the benefit of all.

We believe that the people will meet us in the same just and frank spirit with which we propose to meet them, and we shall be glad at all times to meet any of the citizens affected by these proceedings with a view to the adjustment of any differences and misunderstandings.

M. F. STILES, *Attorney.*

Dotson, W. Va., July 9th, 1894.

XXII. The author of this letter seems to have had some idea of the trouble that would be occasioned by this litigation, and, the public registry being opened to him, could have ascertained all that was promised.

XXIII. The complainant alleges that respondent is the owner of large bodies of land or timber upon Tug river and upon the headwaters of Panther creek, above, outside, and beyond the lines of complainant's land, and complainant is advised that said defendant is in no manner dependent upon any timber claimed by it under the aforesaid pretended purchases from "squatters" upon complainant's land for the operation of its said mill. Be this true or untrue, it furnishes no *or* argument for interfering with the vested rights of respondent, for it is operating upon its own property and has a right to do so unmolested. It is not true, however, that respondent owes any land or timber on Tug river outside of complainant's pretended boundaries, except the timber estimated heretofore as 5,000,000 feet, which is composed of trees bought here and there and trees furnished by individuals.

56 XXIV. The south line claimed by the complainant lies about four miles south of the mills of respondent, and it is beyond this that respondent owns lands outside of complainant's line, which is on the waters of Panther creek. The railway constructed by respondent for furnishing his mill runs up Panther creek about a mile, then up Trap fork of Panther nearly west about four miles. This road as now run traverses all the way timber owned by respondent. To inhibit respondent from using this timber would drive it to lose three miles of its road and to build about five miles more to reach beyond contested line to its timber, all at an additional cost of at least $20,000.00, if the complainant would not be emboldened to actually seek to prohibit the building of the road at all. These suggestions will show the fallacy of complainant's allegation on this subject.

XXV. Respondent is advised that there are no equities whatever in the assertion of complainant's title as would entitle him to the intervention of a court of equity. His title is as near a myth as one can be. The land cannot be surveyed. The title to it has been hawked about and conveyances thereof made in this and the old world. Complainant does not pretend to gainsay that it has been forfeited under the constitution and statutes of West Virginia, and only claims that the provisions of the West Virginia constitution and the statutes of that State relating to the forfeiture of land for failure to place it on the land books for taxation and to pay taxes on it is in contravention of the Constitution of the United States.

XXVII. Your respondent is advised that the rule adopted by the Hon. J. J. Jackson in these cases in granting an injunction was simply ancillary to ejectment, and the complainant states in his present bill that about the 16th day of January last he filed his bill against respondent and a large number of other defendants praying the same relief herein asked for; that a temporary restraining order was granted; that the restraining order was afterwards suspended; but he fails to state that in that first bill he made the following allegation: "The complainant has already instituted action- in

57 ejectment in this court, and the same are now pending therein, against all of said persons who, so far as complainant knows, claim any right or title to said land adversely to complain-

ant, and this bill and the relief herein sought is in aid of said action."

XXVIII. Respondent is assured from that the court granting the injunction was led to believe that ejectment had been instituted against respondent, and under this respondent was harassed by motions of complainant until about the first of July, when, in responding to a motion to reinstate the injunction at Parkersburg, the fact was made known to the court that complainant had never sued the respondent or Sibley & Bearinger, under whom respondent claims, and doubtless it was for this reason that complainant dismissed his former bill and now presents the present one.

XXXI. It is true that what has heretofore occurred under proceedings of the former bill cannot affect this, but respondent begs to say that the complainants is in great error when he says that defendant came before this court (meaning at Charleston, in May last) and declared that no timber of consequence was being cut by it and it being understood that none would be cut by it. It this is meant to convey the idea that any representations were made by any one to the court at the said May term at Charleston, it is a mistake, for the matter was not mentioned to the court, but on that occasion the agent of the defendant emphatically and positively told the active counsel of complainant that he expected from thence on to cut timber and to do so until stopped by the court; that he would do this to bring litigation to a speedy issue, because defendant wanted the litigation pressed.

XXXII. Complainant states that he has contemporaneously with the framing of his bill instituted actions of ejectment against the defendant in this court for the recovery of the land claimed by the defendant. Respondent has no way at present of ascertaining the truth of this, it never having received any notice of these suits except the statement in the bill. Your respondent further states that its company and the persons interested therein have ample
58 means to respond in damages for any wrong they may have done or may hereafter do to the complainant's land, as now claimed by him. The complainant is a non-resident of the State of West Virginia and has no visible means of any kind in it and will be unable to give any bond, should an injunction be allowed, that will indemnify the respondent for loss.

And, having now full- answered, defendant prays that the injunction prayed for by plaintiffs be not granted, but that the plaintiff's bill be dismissed and the plaintiff sent to a legal forum to try his title; and will ever pray, &c.

PANTHER LUMBER COMPANY,
By HENRY & GRAHAM,
[CORPORATE SEAL.] *Its Attorneys.*

The defendant, The Panther Lumber Company, in the above-styled cause to authen-icate this its answer has caused its corporate seal to be affixed, attested by its secretary.

J. P. KROLL, *Secretary.*

STATE OF VIRGINIA, *County of Tazewell,* } *To wit:*

J. P. Kroll, a stockholder in the defendant corporation, whose answer is above set out, being duly sworn, says that he was and is yet the agent for Sibley & Bearinger in the examination of the titles and purchase of the lands in the bill mentioned as purchased by the said Sibley & Bearinger; that he is the secretary of the defendant corporation, and that the facts and allegations in said answer are true, except so far as they are therein stated to be on information, and as far as they are therein stated to be on information he believes them to be true, as witness his signature.

J. P. KROLL.

59 Taken, sworn to, and subscribed before me, V. L. Sexton, a notary public in and for the State and county above mentioned, on this the 19th day of July, 1895.

V. L. SEXTON,
[NOTARIAL SEAL.] *Notary Public.*

In the Clerk's Office of the Circuit Court of Tazewell County.

VIRGINIA:

I, H. Bane Harman, clerk of the circuit court of Tazewell county, in the State of Virginia, do certify that the foregoing signature of V. L. Sexton, the notary public who has certified the affidavit of J. P. Kroll, above set out, is genuine, and that the said notary public has authority to administer the oath which he did to the said J. P. Kroll.

Given under my hand and official seal on this the 19th day of July, 1895.

[COURT SEAL.] H. BANE HARMAN, *Clerk.*

Answer of Jerome P. Kroll.

(Filed August 3rd, 1895.)

In the Circuit Court of the United States for the District of West Virginia.

To the hon. judge of said court:

The answer of Jerome P. Kroll to a bill in chancery exhibited in said court against him and the Panther Lumber Company respectfully represents that he is advised that he is improperly made a party defendant to said bill, as he does not own, individually, any land or timber in McDowell county. He was and is yet the agent of Sibley and Bearinger, whose extensive purchases he made in manner and form as set out in the answer of The Panther
60 Lumber Co. (respondent's codefendant) filed to said bill. Respondent is a stockholder in his codefendant company, its

secretary, and attorney-in-fact, and in such capacity only is he operating.

And, having fully answered, prays hence to be dismissed.

JEROME P. KROLL,
By HENRY & GRAHAM, *Counsel.*

I, Jerome P. Kroll, being duly sworn, do state that the averments in my answer above are true.

Given under my hand this the 20th day of July, 1895.

J. P. KROLL.

STATE OF VIRGINIA, *County of Tazewell,* } *To wit:*

I, V. L. Sexton, a notary public in and for the county and State aforesaid, do certify that Jerome P. Kroll this day made oath to the above affidavit in my said county.

This 20th day of July, 1895.

[NOTARIAL SEAL.] V. L. SEXTON, *Not. Pub.*

And at another day, to wit, on the 3rd day of August, 1895, the following order was made and entered of record at chambers, to wit:

HENRY C. KING, Compl't,
vs.
PANTHER LUMBER COMPANY *et al.*, Def'ts. } In Chancery.

This day came the above-named complainant and presented to the undersigned, one of the judges of this court, this bill of complainant against said defendants, praying, among other things, for an injunction to inhibit and restrain defendants from cutting timber upon so much of a certain 500,000-acre tract of land mentioned and described in said bill as lies within said district, and from removing from said land any timber already cut thereon, and
61 said bill having been read and considered and certain amendments having been, upon motion of complainant and by leave of court, made upon the face of said bill, the same is ordered to be filed in the office of the clerk of this court, at Parkersburg, and leave is given to sue out process thereon.

And upon consideration of said bill and the answers of defendants presented by them and filed and treated as affidavits to resist the motion of complainant for an injunction at this time, it is ordered that said motion and application for injunction as prayed in said bill be set down for hearing by this court at the court room thereof, at Parkersburg, on the 19th day of September, 1895.

And it appearing to the court from said bill and answer that complainant will suffer irreparable injury from delay in the issuing of the injunction prayed for, it is further ordered that pending the hearing of said motion and application of the 19th day of September, 1895, and until the further order of this court the said defendants and their servants and agents be inhibited and restrained from cutting any timber upon said 500,000-acre tract of land mentioned

in said bill and from removing therefrom or otherwise disposing of any timber already cut upon said tract except the timber growing upon or cut from three certain tracts of land mentioned in the answers, containing respectively 70 acres, 35 acres, and 100 acres, to which three tracts of land and the timber growing upon or cut from same the temporary injunction hereby awarded does not apply.

And it is further ordered that before the said temporary injunction hereby awarded shall take effect the complainant or some responsible person for him shall execute a bond, with good security, in the penalty of $5,000, conditioned to pay to defendants all costs and damages that may accrue to them in the event that said temporary injunction shall be dissolved.

Service of a copy of this order upon defendants shall be deemed and held to be valid and sufficient notice of the rule and restraining order hereby awarded, and C. L. Dixon is specially designated and appointed to make such service.

Enter.

JACKSON, *Judge.*

Aug. 3rd, 1895.

62 *Injunction Bond.*

(Filed August 3rd, 1895.)

Know all men by these presents that we, Henry C. King, as principal, by M. F. Stiles, his counsel of record and of fact in this case, and S. D. Freshman, as surety, are held and firmly bound unto the United States of America in the penal sum of five thousand dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of August, 1895.

The condition of the above obligation is such that whereas the above-bound Henry C. King has obtained from the judge of the circuit court for the district of West Virginia a temporary injunction to enjoin, restrain, and inhibit Panther Lumber Company, a corporation, and Jerome P. Kroll from cutting timber upon a certain 500,000-acre tract of land described in the bill of complaint in the cause of Henry C. King *vs.* Panther Lumber Company *et al.*, pending in said court, and from removing or disposing of timber already cut by them upon said land, until the hearing of motion for permanent injunction prayed for in said bill:

Now, if the above-bounden Henry C. King shall well and truly pay or cause to be paid all such costs, fees, and damages as may be awarded against him in case said injunction (temporary) is dissolved, then this obligation to be void; otherwise to remain in full force and virtue.

And it agreed that in the event of any suit being brought upon this bond service or process upon any attorney of record in the above-mentioned suit of said King, resident in the district of W.

Va., shall be deemed to be valid service of such process upon these obligors.

HENRY C. KING, [SEAL.]
By M. F. STILES,
His Agent and Attorney of Record.
S. D. FRESHMAN. [SEAL.]

Approved:
J. J. JACKSON,
U. S. Judge.

63 And at another day, to wit, on the 19th day of September, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
PANTHER LUMBER COMPANY *et al.* } In Equity.

This cause came on this day to be further heard upon a motion for a permanent injunction. The court is of opinion at this time to continue the motion for a permanent injunction, and at the same time to continue in force the preliminary injunction heretofore entered in this cause until the further order of this court; but it is also of opinion to permit the defendant The Panther Lumber Company to remove all the timber that they have heretofore cut upon Trap fork of Panther creek, in McDowell county, upon the defendant company entering into a bond, with approved security, before the clerk of this court, in the penalty of three thousand dollars, conditioned to perform and abide the future order of this court in the event that the court shall be of the opinion that the timber now cut, or any part thereof, belongs to and is the property of the plaintiff in this action.

And the court is further of the opinion, as there seems to be some doubt as to certain other timber cut within the boundaries of the plaintiff's survey of 500,000 acres, to grant leave to the plaintiff in this action to move the court for a further and additional bond in the event that the plaintiff should become satisfied that the timber cut, other than for which the bond is now given, is within the boundaries, upon giving notice of the time and place of such motion to the defendant or his counsel in this cause.

Counter Bond.

(Filed September 28th, 1895.)

Know all men by these presents that we, The Panther Lumber Company, a corporation of the State of West Virginia, and Jerome P. Kroll, are held and firmly bound unto the United States of America in the penal sum of three thousand dollars; to the
64 payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of September, 1895.

The condition of the above obligation is such that whereas the above-bound The Panther Lumber Company have obtained from the judge of the circuit court of the United States for the district of West Virginia an order permitting it, the Panther Lumber Company, to remove all the timber they have heretofore cut upon Trap frok of Panther creek, in McDowell county, and to perform and abide the future order of the circuit court of the United States, in the event that the court shall be of the opinion that the timber now cut or any part thereof belongs to or is the property of the plaintiff in this action:

Now, if the above-bounden The Panther Lumber Company shall well and truly comply with conditions of this obligation, also pay all such costs, fees, and damages as may be awarded against them in *said case* timber shall be decreed to be the property of the plaintiff, Henry C. King, then this obligation to be void; otherwise to remain in full force and virtue.

[Corporate Seal.]

PANTHER LUMBER COMPANY, [SEAL.]
By JEROME P. KROLL, *Att'y-in-fact.*
J. P. KROLL. [SEAL.]
ISAAC BEARINGER. [SEAL.]

And at another day, to wit, on the 12th day of March, 1896, the following order was made and entered of record, to wit:

HENRY C. KING, Complainant,
vs.
PANTHER LUMBER COMPANY and Another, Defendants. } In Equity.

Upon motion of the defendant Panther Lumber Company, the original answer in this cause, which as shown by another
65 order was treated as an affidavit, shall now be filed and be treated as an answer, and, upon further motion of the defendant The Panther Lumber Company, it hath leave to fil*l* an amended answer and files the same.

Amended Answer of Panther Lumber Company.

(Filed March 12th, 1896.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING, Complainant,
vs.
PANTHER LUMBER COMPANY and J. P. KROLL, Defendants.

The amended answer of the Panther Lumber Company to the bill as amended in the above-styled cause respectfully states that before the bill in this cause was presented to the judge of said court

for injunction counsel for complainant furnished counsel for defendants, in pursuance of an agreement between them, with a copy of the bill which they said would be presented, and, as was further understood, the defendant prepared its answer, which is now among the files and noted in the order awarding the preliminary injunction and read to the extent mentioned in said order.

1. It seems that before the bill (copy of which was furnished complainant's counsel) was acted upon by the court the complainant amended his bill, making material additional allegations, but the original draft of the bill was not left in the papers, the order, however, showing that it was amended. Respondent makes this recital in justice to itself and to explain why material allegations were not responded to in the original answer, and which it begs now to respond to.

2. One of these allegations is as follows:

"And complainant further alleges and shows unto your honor that at the June, 1894, rules of the circuit court of the United States for the western district of Virginia this complainant brought an action of ejectment against one Conley Blankenship and others to recover from them that portion of the said 500,000-acre
66 tract that lies in Buchanan county, Virginia; which action, after a vigorous and able defence in a trial of two weeks' duration before the said court and a jury, has just been decided, and upon the title of the plaintiff as hereinabove set out and upon a survey of said tract by W. D. Sell, made under order of said court in said action, and under an order of this court in an action herein pending between complainant and said Blankenship and others, this complainant recovered verdict and judgment for said land as located by said surveyor and claimed by this complainant, and complainant's title to said tract of land was deemed and adjudged to be valid and perfect.

3. That the location of said 500,000-acre tract and of the lines thereof made by said surveyor and established by the jury upon said trial is the same location that is claimed and contended for in this bill and in all the various actions of ejectment to recover said land and suits in chancery to enjoin trespass thereon brought and pending in this court, and embraces and includes all the land and timber that is the subject-matter of this suit."

4. Respondent is advised that if this statement was true (which is denied), — could have no bearing upon the question in controversy here. The subject of litigation here is to be controlled by the laws of West Virginia, in the main, especially as applied to the forfeiture of the lands under the constitution and statutes of West Virginia.

5. The State of Virginia has no similar laws which applied to that controversy, and, as contended in the original answer and reiterated here, respondent and those under whom it claims have had adversary possession of this land, a question which was not in controversy in the trial in Virginia. Your respondent understands that the prime contentions in the case referred to in Virginia were that the plaintiff had not a good paper title, and this land could not

be identified and located. The defendant did not claim to have held adverse possession long enough to tell the right of entry on part of plaintiff, and could not rely upon forfeiture of plaintiff's title for non-payment of taxes or other reason because there
67 was no statutes to sustain such contention. If that trial was a *bona fide* contest, the defendant was a very poor man, a very deplorable condition to make a contest in that distant and costle court. He was likewise a very ignorant man. The place of trial where his counsel resided was a great distance from the premises, and his counsel, though able men, proved to be poorly posted and equipped to encounter complainant and his agents. This case was paraded by plaintiff for a great while far and wide for its sage effect upon the numerous antagonists of the complainant.

6. But, however this may have been, great changes have taken place since that comparatively significant contest. Shortly after that trial another one took place at the same place (Harrisonburg Va., *Va.*) and before the same court.

7. Complainant here was plaintiff there and Elkhorn and Sandy River Land Trust was defendant, wherein and whereby the plaintiff was reduced to a comparatively small area of land. The map and survey of the same W. D. Sell mentioned in said amended allegation were repudiated by the jury, and the western line of the 500,000 acres claimed by the complainant as found by the jury in the last-mentioned case was restricted to what is known as the Gilberts and Turkey Creek line, whereby the plaintiff *lost*, so far as that verdict was concerned, a larger and more valuable portion of the land claimed by him, and his survey turns out to be less than 100,000 acres instead of 500,000 acres. The court refused to entertain plaintiff's motion to set aside the verdict and entered up judgment on the verdict as found, and the plaintiff did not even appeal; thus, to say the least of it, the confusion already existing in Virginia has now become worse confounded, and your respondent again reiterates that when properly tested, especially in the State of West Virginia, this survey will not be located; but this is not all the legal tests to which this title has been put.

68 8. During the month of December, 1895, an action of ejectment tried at Parkersburg, West Virginia, in the circuit court of the United States for that district, wherein H. C. King, the complainant here, was plaintiff and M. B. Mullins and others were defendants, in which case the Hon. J. J. Jackson presided, the jury disagreed and there was no verdict. There was no opinion given up to that time on the question of forfeiture. During the month of January, 1896, the same case was again tried, Hon. Nathan Goff presiding, and, upon motion of the defendants, he promptly instructed the jury that the plaintiff's title was forfeited under the constitution and laws of the State of West Virginia, and that the plaintiff could not therefore maintain his action, and verdict was rendered for the defendant; and more recently judgment was pronounced on this verdict, that the plaintiff take nothing by his suit. Copies of the orders of said court in said action are filed as parts of this answer, marked respectively "Verdict," "Judgment." Your respondent

avers that the plaintiff in the last-mentioned action has declared his intention of appealing to the Supreme Court of the United States to test the constitutionality of the laws upon which Judge Goff predicated his ruling.

9. Your respondent avers that the pretended title of the plaintiff there adjudicated is the same one asserted against your respondent both in the action of ejectment against it and in the bill in this cause—identically the same and in no respect different.

10. Your respondent relied in its original answer, and relies still, upon the forfeiture of the plaintiff's title for failure to have his land placed upon the commissioners' books in West Virginia in any of the counties where it is said to lie or to pay taxes on it. Your respondent means by this that neither the plaintiff in said actions of ejectment nor any one under whom he claimed ever had this
69 land on the commissioners' books, as required by the constitution and laws of the State of West Virginia, or paid taxes on it. Respondent filed as part of his original answer a certificate of the auditor of public accounts of West Virginia showing this forfeiture, marked Exhibit "Auditor," but upon examination of the files of this cause recently this exhibit cannot be found therein or in the clerk's office, although the clerk of the court where the papers are made diligent search, and respondent begs to supply this by a like certificate with this answer, marked "Auditor."

11. The complainant also inserted in his said bill, after copy furnished respondent's counsel, the following allegation: "The complainant purchased said land chiefly on account of said timber and with the purpose of embarking in extensive operations for cutting and manufacturing said timber, and has made and is making extensive preparations and arrangements for so cutting and manufacturing same, and has associated other capitalists with himself, and has expended large sums of money in the purchase of said land and machinery and in preparations for utilizing said timber, and designed said business as an investment for his capital; and complainant says that large profits are to be made in the cutting, sawing, and manufacturing of said timber.

12. That said machinery consists in part of a steam band-saw mill capable of manufacturing 50,000 feet of lumber per day, and the same is now and has for a long time been in this district ready to be set up and put in operation upon said land as soon as the same can be done without hinderance and interruption by persons asserting, like defendants, unfounded claims to portions of said land."

13. Complainant is continually making these assertions as their way of asserting possession of said land and of claiming the in-ven-
tion of a court of equity. If they were true, they are but
70 *peruile* and small, as indicia of claim to this great boundary of 500,000 acres of land, and are simply rediculous pretenses. Recently complainant or his agents may, and probably did, bring some machinery on the boundary they claim and cut a few trees; further than this, respondent denies the truth of their allegations. Respondent also reiterates and adopts as part of this answer his answer already filed.

14. Respondent also filed copies of three several deeds from Hiram W. Sibley and others for Panther Lumber Company, marked numbers 10, 11, and 12. Respondent is further advised that the court will not interfere with it in the building of its tramway.

And, having now fully answered, defendants prays that the injunction heretofore temporarily granted be dissolved, and that the complainant's bill be dismissed; and respondent, to authenticate this answer, has caused its corporate seal to be affixed, attested by its secretary.

PANTHER LUMBER COMPANY.
[CORPORATE SEAL.] J. P. KROLL, *Secretary.*

COUNTY OF MCDOWELL, *State of West Virginia,* } *To wit:*

J. P. Kroll this day personally appeared before me, W. L. Thompson, a notary public in and for said county, and made oath in said county that he is a stockholders in the defendant corporation whose answer is above set out, and that he is secretary thereof; that the facts and allegations in said answer are true except so far as they are therein stated to be on information, and so far as they are therein stated to be on onformation he believes them to be true.

Given under my hand this the 6th day of March, 1896.

W. L. THOMPSON. [NOTARIAL SEAL.]

71 EXHIBIT "VERDICT."

At a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, in said district, on the 30th day of January, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS, ALEX. MCCLINTOCK, *et al.* } In Ejectment.

This day came again the parties, by their counsel, and the jury which was empanneled and sworn on a former day of this term to try the issue joined in this cause, who, having heard the evidence, by direction of the court returned the following verdict, to wit:

We, the jury, by direction of the court, find the defendants, M. B. Mullins, Alexander McClintock, and John McClintock, not guilty.

A. J. SMITH, *Foreman.*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 30th day of January, 1896, in the case of Henry C. King *vs.* M. B. Mullins *et al.*, therein pending.

Given under my hand and the seal of said court, at Parkersburg, in said district, this 27th day of February, 1896.

[SEAL.] L. B. DELLICKER, *Clerk.*

EXHIBIT "JUDGMENT."

At a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, in said district, on the 27th day of February, 1896, the following order was made and entered of record, to wit:

72 HENRY C. KING
vs.
M. B. MULLINS, ALEX. MCCLINTOCK, *et al.* } In Ejectment.

This day came again the parties, by their counsel, and thereupon the defendants, by their counsel, moved the court to render judgment upon the verdict of the jury rendered on the 30th day of January, 1896.

It is therefore considered by the court that the plaintiff take nothing by his bill, but for his false clamour be in mercy, &c., and that the defendants go thereof without day and recover of the said plaintiff their costs by them about their defense in this behalf expended.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 27th day of February, 1896, in the case of Henry C. King *vs.* M. B. Mullins *et al.*, therein pending.

Given under my hand and the seal of said court, at Parkersburg, in said district, this 27th day of February, 1896.

[SEAL.] L. B. DELLICKER, *Clerk.*

EXHIBIT "AUDITOR."

STATE OF WEST VIRGINIA,
AUDITOR'S OFFICE, CHARLESTON.

I, Isaac V. Johnson, auditor of the State of West Virginia, do hereby certify that neither Robert E. Randall, trustee, nor Josiah Randall, nor John R. Reed, trustee, nor John V. Le Moyne, Henry C. King, John Joseph Marie Schmidt Thornfelt, August
73 Marie Noverre d'Sericourt, Louis Antoine des Verges de Maupertures, A. D. Maupertures, John Peter Dumas, Emile Dumas, Charles Dumas, nor David Armstrong have entered upon the land books of Wyoming, McDowell, Logan, Boone, or Mingo counties a tract of five hundred thousand acres of land for the years 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, and 1894, nor have either of them had said tract of five hundred thousand acres of land entered upon the land books of either or any of said counties for either or any of said years, nor have they or either of them paid any taxes upon said land for any of said years within any of said counties, as appears from the records in my said office.

I do further certify that said tract of five hundred thousand acres

is not entered on the books of the assessor of any of said counties for any of said years.

I do further certify that no land was entered on the books of the assessor of any of said counties for either or any of said years in the name of either or any of said parties.

And I do further certify that none of the persons hereinbefore mentioned was charged on the land books of any of said counties with State tax on the land aforesaid or any part of it for the years aforesaid or any of them.

In witness whereof I have hereunto set my hand and official seal this 9th day of March, 1896.

I. V. JOHNSON,
Auditor West Virginia.

[SEAL.]

And at another day, to wit, on the 26th day of June, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
PANTHER LUMBER COMPANY *et al.* } Equity.

74 On this 26th day of June, 1896, came the complainant, by his counsel, and filed his exceptions to the answer and amended answer of the defendant Panther Lumber Company, and upon his motion the same is set down for hearing. Thereupon the complainant tendered his amended bill of complaint and asked leave to file the same, and the same is ordered to be filed.

Exceptions to Answer.

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* }

Exseptions of complainant above named to the answer and amended answer of defendant Panther Lumber Company to complainant's bill herein.

First exception. The said complainant excepted to that portion of said answer contained in the paragraph "II" thereof beginning with the words "In the year 1888," near the bottom of page "11" of said answer, for that the whole of said paragraph is and the matters therein contained are impertinent.

Second exception. The said complainant excepts to that portion of said answer contained in paragraph III beginning with the words "The said defendant further says that the said Sibley, Bearinger & Mills," near the bottom of page "2," and to the whole thereof, for that the same is impertinent.

Third exception. The complainant excepts to that portion of said answer contained in all the latter part of paragraph IV on page three, said part beginning with the words "And respondent avers

that the agents and attorneys," &c., for that the same is impertinent.

Fourth exception. Said complainant excepts to all of said
75 answer contained in paragraph V, beginning with the words "Not one word," near bottom of page three of said answer, for that the same is impertinent.

Fifth exception. Said complainant excepts to all that portion of said answer contained in part of paragraph VII, pages 4 & 5, said part beginning with the words "The defendant is informed that the only entry on or possession of said lands," &c., all the rest of said paragraph, for that the same is scandalous and impertinent.

Sixth exception. Said complain-t excepts to that portion of said answer contained in the latter part of paragraph VIII, page "5" of said answer, viz., the words "states that it believes the assertion of the pretended title of plaintiff to be the act of an adventurer," for that the same is scandalous and impertinent.

Seventh exception. Said complainant excepts to the words "with a *w*reckless disregard for the truth," in the first line of paragraph XIV, page 7, of said answer, for that the same are scandalous and impertinent.

Eighth exception. Said complainant excepts to that part of said answer contained in the sentence of paragraph XIV, near middle of page "8" of said answer, beginning with the words "Complainant sees proper to apply the con*t*amptuous *epitaph*, squatters," &c., for that the same is scandalous and impertinent.

Ninth exception. Said complainant excepts to that portion of said answer contained in the first sentence of paragraph XX, page twelve of said answer, for that the same is scandalous and impertinent.

Tenth exception. Said complainant excepts to all that part of said answer contained in paragraph XXI, pages "13" and "14" of said answer, and relating to an alleged circular letter of complainant's counsel, for that the same is impertinent.

76 Eleventh exception. Said complainant excepts to that portion of said answer contained in paragraphs XXV and XXVI, on page 16, for that the same is impertinent.

Twelfth exception. Said complainant excepts to all that part of said answer contained in paragraph XXX, beginning with the words "Many of the people," &c., page 17 of said answer, for that the same is impertinent.

Exceptions to Amended Answer.

First exception. This said complainant excepts to all that portion of defendant's amended answer beginning with paragraph 6 and the words "But however," near middle of page three thereof, and extending through paragraph that begins on page four with the words "Your respondent avers," and for ground — exception says that the same is impertinent and immaterial, and, further, that all the matters therein stated appear and purport to be of occurrence subsequent to the time of filing complainant's bill and defendant's

answer and subsequent to the cause of action stated in said bill and the defenses attempted to be set up by said answer, and because if otherwise material they could not be set up by amendment.

Second exception. Complainant excepts to that part of said amended answer contained in the first two sentences of paragraph 13, page 5, of said answer, for that the same is scandalous and impertinent.

In all which particulars complainant excepts — the said answer and amended answer and moves the court that the matter so excepted to be expunged therefrom.

MAYNARD F. STILES,
Of Counsel for Complainant.

77 *Amended Bill of Complaint.*

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING, Complainant,
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.*, Def.
} Amended and Supplemental Bill of Complaint.

To the honorable judges of the said court, sitting in equity:

Comes now Henry C. King, the complainant in the above-entitled cause, and exhibits unto your honors this his amended and supplemental bill of complaint against the said Panther Lumber Company, a corporation, praying leave to file the same herein, and thereupon complainant alleges—

That theretofore, to wit, on the 3rd day of August, 1895, complainant duly made and filed his original bill of complaint in this suit against said corporation and one Jerome P. Kroll; to which original bill this is an amendment, and to which bill complainant begs leave to refer, and he hereby reiterates and reaffirms all and singular the allegations and averments in said original bill contained and set forth, and prays that the same may be taken and considered as a part of this amendment in the same manner and to the same effect as if said allegations and averments were herein fully and at large copied and set out; and on the same 3rd day of August, 1896, defendants filed their answer to said original bill, and afterwards, to wit, on the 12th day of March, 1896, defendant Panther Lumber Company filed its amended answer to said bill.

And complainant further shows that the first and second corners of complainant's said survey and the first line thereof are well and indisputably established, and are commonly conceded by the
78 persons claiming rights adversely to complainant, but from said second corner onward complainant contends for one manner and his various antagonists for another manner of defining the remaining lines of said grant; but whether the one location or the other or any that can be devised from the calls of said grant shall be adopted, all the land and timber upon which the trespass

and depredation of defendants have been done or threatened and which is the subject of complainant's complaint is situated within complainant's grant, it being the well-known and well established and defined line aforesaid that divides and separates said land and timber from all the other timber claimed by defendants in West Virginia, and none of the said timber or land claimed by defendants that is the subject of this complaint is outside said grant by any possible location of the same, and the said timber passed to and became the property of complainant under the deeds of said land to him, and none of the same, with the possible exception of a small area thereof excluded from the operation of the injunction heretofore awarded herein, has been held by defendant or any person under which it claims adversely to complainant for a sufficient period of time to bar complainant's right of action or for such person to acquire any title thereto.

And complainant would exhibit unto your honors further of his title to said land as follows:

The said John Peter Dumas, trustee as aforesaid of the said estate of James Swan, in his lifetime executed to one John Joseph Marie Schmidt Thornfeld certain deeds and contracts for portion or all of said Swan estate, which consisted of numerous large tracts of land, among them being a contract or conveyance of 300,000 acres to be selected by said Thornfeld out of said 500,000-acre tract, and another contract or conveyance for the whole of said estate,
79 and the rights or interests thereby acquired by said Thornfeld afterwards became vested in or *was* claimed by Louis Antoine des Vergus de Maupertuis (sometimes spelled Ma*n*perture) and August Marie Fermin Noverre de Serecourt, and afterwards *was* claimed by De Ma*n*pertuis, and the whole estate by Emile Dumas.

In a chancery suit instituted in the circuit court of Virginia for the county of Logan, now West Virginia, wherein the greater part of said 500,000-acre tract lay, wherein one Claud Bernard was complainant and said Thornfeld, De Serecourt, De Ma*n*pertuis, Emile Dumas, and others were defendants, a decree was made and entered on the 2nd day of March, 1855, whereby it was directed that so much of said 500,000-acre tract as should be necessary would be sold for the payment of certain monies therein stated, and one James M. Laidley was by said decree appointed a special commissioner for the purpose of making said sale and conveyance thereunder. The records of said court, including the record of said suit, have long since been destroyed, but the proceedings therein are referred to in the deed made pursuant to the sale had under said decree.

Pursuant to said decree an undivided three-fourths of said 500,000 acres was sold and conveyed by said commissioner to Anthony Lawson on the 10th day of May, 1856, and said deed was duly recorded in the office of the clerk of the county court of said Logan county, at the February, 1857, term thereof, and now appears upon said record, a copy whereof will be filed herein as soon as the same can be had and made part hereof and marked "H. C. K. No. 12."

By deed dated July 26th, 1876, said Lawson and his wife con-

veyed the land to James L. Black and Abraham Suydam. Suydam and wife, by deed dated August 9th, 1876, conveyed their interest therein to said Black; Black by deed dated October 9th, 1876,
80 conveyed said undivided three-fourths of said 500,000 acres to William Reed, who conveyed the same by deed dated October 8th, 1878, to the Pittsburg National Bank of Commerce. The said bank by deed of June 23rd, 1893, conveyed the same to said Davis Armstrong, who conveyed the same by deed dated Aug. 5th, 1893, to complainant King. All said deeds, duly and properly executed and acknowledged, were duly and promptly recorded in said Logan and other counties where said land was situate, and copies of the same, marked H. C. H. No. 13 to No. 18 respectively, will be filed herein as part of this bill.

By a decree made and entered in the circuit court of Virginia for the county of Kanawha (now West Virginia) January 21st, 1859, in the consolidated suits of Dumas *vs.* De Monsignon *et als.*, Randall, trustee, *vs.* Dressler *et als.*, and La Couture *vs.* Randall, trustee, *et als.*, it was, among other things, adjudged that said De Manpertuis was the owner of 300,000 acres of said 500,000-acre grant, subject to a mortgage or lien thereon for 227,000 franks in favor of said Swan estate, and that Randall, trustee, was the owner of said mortgage and of 200,000 acres of said land. Manpertuis' portion was ordered to be sold to satisfy said mortgage, but no sale thereof was made until the sale to Armstrong by order of this honorable court in 1891, as aforesaid, in said suits, which had been removed thereto.

The said Anthony Lawson was not a party to any of the last-mentioned suits, which were all subsequent to the decree under which he claimed title.

The said trustees of said Swan estate did not recognize the claim of title of said Lawson and his grantees and continued to claim title to the whole of said tract, while said Lawson and his successors claimed the undivided three-fourths thereof; but whatever be the merit or want of it in the claim of either party, the whole
81 title has been reunited in this complainant, and he is the owner thereof and of all the estate, right, title, and interest granted by the said Commonwealth of Virginia to said Robert Morris and of every right, title, or interest ever claimed by any one through or under the said Morris; and all the grants, orders, decrees, deeds, and other evidences and muniments of complainant's or his predecessors' title have been duly and promptly and properly recorded in the proper offices and courts, open at all times to inspection and examination.

And complainant further says that he is advised that defendant contends and will contend that the said tract of land claimed by complainant has not been entered upon the land book of the proper counties for taxation in the name of complainant or those under whom he claims since the year 1883, and that therefore all the title of complainant and of those under whom he claims has become forfeited and divested out of this complainant or those under whom he claims and is absolutely vested in the State of West Virginia, and through such forfeiture is further vested in defendant corporation

or those under whom it claims as to parts thereof, and that therefore complainant ought not to maintain this suit; with respect to which contention this complainant begs to say—

That the assessing officers of said Logan county, notwithstanding the fact that there are not more than 300,000 acres of said entire tract lying in the State of West Virginia, charged said undivided interest therein against said Lawson upon the land books of Logan county as 375,000 acres, and all taxes charged and chargeable thereon, from the year 1865 to and including the year 1876, were paid by said Lawson, and his grantees, Black and Suydam, did the like until the year 1878, when the said interest claimed by them was by order of the county court of said county reduced in
82 acreage to 100,000 acres, and upon that amount all taxes were paid by said Black, Suydam, Reed, and the Pittsburg National Bank of Commerce, up to and including the year 1882.

That notwithstanding said undivided three-fourths of said tract of land was being charged with taxes and said taxes were being paid to and received by said State, as aforesaid, in said Logan county, upon at least 75,000 acres, more land than there was or is in said entire tract in said State, the assessing officers of the said State, in the county of Wyoming, in which a part of said land lies, in the year 1869, charged said entire tract against said Randall, trustee, and said Manpertuir, 200,000 acres to the former and 300,000 acres to the latter; and the taxes charged against said Randall, trustee, for the fiscal year 1871–'2 and against said Manpertuis for the fiscal 1873–'4 being returned delinquent, notwithstanding the receipt from Lawson of the taxes upon more land than there was in it and for the same years, the said land was sold or attempted to be at tax sale and purchased by said State of West Virginia.

That afterwards a proceeding was instituted in the circuit court of said State for Wyoming county on behalf of said State to sell said 500,000-acre tract of land, and said Robert E. Randall, trustee, filed his petition therein praying leave to pay any taxes that might be due upon said land and to redeem the same, and said Pittsburg National Bank of Commerce filed its petition contesting the title of said Randall, and in said suit such proceedings were had that on the 10th day of April, 1883, a decree was made wherein it was adjudged that the said Randall, as trustee of said Swan estate and as a creditor of said Manpertuis, had title superior to all others to said land and the right to redeem the whole of said 500,000-acre tract, and that the sum of $8,000.00 that day paid into open court was the
83 total amount of all taxes, costs, charges, and damages due upon said land and up to and including the year 1883, and decreeing that said payment operate as a release and oxoneration of said taxes on said land, and that no sale thereof be made, and none was made.

That in and by said last-mentioned decree it was ordered that the clerk of said court certify copies of said decree to the auditon and "to the assessor of the proper assessment districts for taxation."

That it therefore appears that the said State of West Virginia charged and secured from those under whom complainant claims

for a period of about eighteen years, on account of said 500,000-acre tract, taxes upon from 600,000 *the* 875,000 acres, whereas, according to complainant's location of said tract, there are less than 300,000 acres, and by defendant's location less than 40,000 acres embraced in said tract within said State.

That defendant contends and alleges that the said assessors failed to charge said land upon the land books, as they were required by the aforesaid decree and as it was their duty to do, and that no taxes were charged or assessed against said tract of land in said counties after the year 1883, and if said land was omitted from said land books complainant charges that such failure and omission was the fault of said State of West Virginia and her officers and agents and not of complainant or those under whom he claims, who would have paid any taxe*d* demanded of them or of any of them.

That complainant is advised and charges that no report of the alleged omission of said land from the land books was made to the auditor of said State with all or any of the facts in relation thereto, as is required by statute, nor was any such report filed in the office of the said auditor, nor recorded in any book kept by him,
84 nor has the said auditor at any time certified the said land to the commissioner of school lands of any county, nor has any commissioner of school lands of any county certified the same to the circuit court of such county in the manner provided by law, nor have any of the acts and things required by law of the various State or county officers been done or observed, nor has any record of such omission of said land from the land books or any judicial determination of or inquiry into the matter ever been made, nor any forfeiture ever been adjudged, determined, or declared by any tribunal or any proceeding for the purpose.

That the auditor of said State is required by statute to keep in his office a record of all forfeited real estate that shall come to his knowledge, in which shall be shown the name of the former owner or supposed owner of such land, the quantity or supposed quantity and local or other description thereof, for what years the owner was not charged with taxes, and when the real estate became forfeited; and said statute makes it the duty of the clerks of the county courts of the various counties, and who are the custodians of the land books, to certify to the auditor the omission of lands from the land books, and complainant avers that such a record is and ever since the year 1883 and long prior thereto has been kept by said auditor as so required of him by law; and complainant further avers that there is no entry or mention of or reference to the said land claimed by complainant or any part thereof upon said record, nor in the office of the said auditor, nor is there any record of any forfeiture or pretended forfeiture of said land or any part thereof since 1883 in any office or place, and complainant will file herewith, to be taken as part of this bill, the certificate of the said auditor in support of this allegation, and mark the same "H. C. K. No. 19;" and complainant says that the object of such record is, among other
85 things, to afford notice to the world of the lands forfeited and to warn purchasers and incumbrancers of the claims of said

State, and complainant says that the said State and all persons claiming under it are bound and estopped by said record.

And complainant further says that when he purchased said land he did so in good faith and for a valuable consideration, equal to more than three hundred thousand dollars, and in total ignorance and without notice or suspicion that said land or any part thereof or any interest therein was claimed or alleged or supposed or pretended to be forfeited, but believing that he acquired by his said purchase a perfect, complete, and indefeasible legal and equitable title thereto and to all thereof except such parts as might have been lost by adverse possession under the statute of limitations, relying largely upon the fact that the said land for a long time had been a trust estate under the control of this honorable court and had been but a short time before complainant's purchase sold by its order to complainant's grantor, and relying also upon the failure of the public records to disclose any defect in the title of complainant's grantor to said land.

That as soon as complainant discovered that said land was claimed to be forfeited he made every effort and offer and has been at all times willing and able to pay and settle with said State and her officers for any taxes, if any, that should or ought to have been charged against said land and paid by him or his predecessors, but the said State, through her said officers, have refused to receive the same.

And complainant further shows unto your honors that since the filing of complainant's original bill herein an action of ejectment was tried in this court between complainant and M. B. Mullins and others, in which action defendants herein were not parties,
86 and in said action it was contended by said Mullins that said complainant's said land had been omitted from the land books, and that complainant's title had been thereby forfeited, and complainant denied the validity of the law of said State relied upon by said Mullins; but the court ruled that the said law was valid and not in conflict with the Constitution of the United States, as contended by this complainant, and directed a verdict and judgment in favor of said Mullins *et als.* on the sole ground that plaintiff's, this complainant's, title was forfeited, and the complainant therefore sued out of the Supreme Court of the United States a writ of error to reverse and supersede said judgment, and the same is now pending and undetermined in said Supreme Court, and therefore complainant respectfully begs leave to contend that the said forfeiture laws of said State are invalid and void.

Wherefore complainant prays as he hath heretofore prayed in his said original bill of complaint, and thus will he ever pray, &c.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES, *Solicitor.*

UNITED STATES OF AMERICA, } *To wit:*
District of West Virginia, }

Maynard F. Stiles, being duly sworn, doth say that he is solicitor for said complainant, has read the foregoing amended bill of complaint and knows the contents thereof, and that the allegation-therein contained are true of his own knowledge except those therein stated to be upon information and belief, and that those he believes to be true, and that this verification is made by complainant's solicitor and not by complainant for the reason that said complainant is not within said district or where he may conveniently verify said bill.

MAYNARD F. STILES.

Taken, subscribed, and sworn to before me this 26th day of
87 June, 1896.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

EXHIBIT H. C. K. No. 12.

Whereas by a decretal order of the circuit court of Logan county pronounced on the 2nd day of March 1857 in a cause therein depending in which Claude Bernard was complainant & Theodore Dollarde & others were defendants it was amongst other things ordered and decreed that *that* on the failure of the defendant or some one for him to pay the plaintiff the sum of $3,345.07 within three months from the date of said decree that James M. Laidley & Evermont Ward who were appointed special commissioners for that purpose shall sell at public auction the undivided moiety of the five-hundred-thousand-acre tract of land in the complainant's bill mentioned or so much thereof as shall be necessary to pay the plaintiff his debt of $3,345.07 & interest & costs after giving notice of the time and place of sale by advertising the time and place of sale at Logan court-house & in some newspaper published in Kanawha county for four weeks successively before the say of sale on a credit of six twelve eighteen and twenty-four months bond with good security & reserving the title till the purchase-money shall be paid & requiring also the payment of $100.00 in hand by the same decree it was further ordered that said commissioner- should further sell at the same time & place & on the same terms if the sum of $44.09 *cents* with interest thereon from the first day of May 1850 be not paid so much of said 500,000 acres as shall be necessary to pay the said last-mentioned debt & costs & whereas afterwards to wit James M. Laidley, one of the commissioners aforesaid reported to the said court that Evermont Ward who had been appointed a commissioner with him had de-
88 clined to act — such & that he James M. Laidley commissioner as aforesaid did sell one moiety of the tract of land aforesaid after having advertised the time and place of sale in the Kanawha Republican and posted the same at the door of the court-

house as required by said decree and did in pursuance of said decree take bonds of the purchaser for the purchase-money above the sum of $100, when Anthony Lawson became the purchaser for the sum of $150 and agreed to pay the said sum of $49.09 *cents* with its interest aforesaid for the half of the remaining moiety & then & there agreed to pay the entire purchase-money down and receive his deed for the land so purchased there being no exception to the said report the same was confirmed and thereupon it was adjudged ordered & decreed that when Lawson should pay off Commissioner Laidley the bond due for the residue of the purchase-money with the interest thereon that then the said James M. Laidley who was thereby appointed a special commissioner for that purpose should prepare sign seal and acknowledge for record a proper and apt deed of conveyance in the name & on the behalf of the proper parties in the record to the said purchaser for the undivided three-fourths of the said tract of 500,000 acres of land now this indenture witnesseth that for and in consideration of the premises and for and in consideration that the said Anthony Lawson the purchaser aforesaid did pay the entire purchase-money to the said commissioner pursuant to the decretal order aforesaid we John Joseph Mary Schmit Thornfeld August Marie Francois Noverre de Serecourt Louis Antoine des Verges Demaupertuis & Emiley Dumas have *have* granted bargained and sold & by these presents do grant bargain & sell unto Anthony Lawson the purchaser aforesaid three undivided fourth parts of a tract or parcel of land containing five hundred thousand acres more or less lying formerly in the counties of Wythe & Russell but now mostly in the counties of Logan and
89 Wyoming & is bounded as follows to wit beginning at two poplars & two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek a branch of Sandy river being the corner of a survey made for Wilson Cary Nicholas containing four hundred and eighty thousand acres and of a survey of three hundred and twenty thousand acres made for said Nicholas and Jacob Kenney and with a line of the latter thirty-three degrees west six thousand and seven hundred and twenty poles crossing a dividing ridge and down War creek to the mouth crossing Sandy river at six miles Panther creek at nine miles and crossing several ridges to 4 white oaks on the northwest fork of Knox creek and thence leaving the said survey west three thousand eight hundred and forty-two poles crossing a creek & some of the branches & along the spur of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to three poplars & a sugar tree by a small branch of Knox creek thence N. 8,000 poles crossing Knox creek at about 4 miles Sandy river at twelve miles at the mouth of Turkey creek & up said creek on the northwest of the same crossing Buffalo creek Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers & Gilberts creek twice a branch of Guyandotte river to three sugar trees in a bottom of said river and about 20 poles below the mouth of Gilberts creek & thence N. 10 E. 4,450 poles crossing Guyandotte river several small branches and some ridges to pointers thence east 6,620 poles cross-

ing Guyandotte river & several branches thereof to three sugar trees & a buckeye by a small branch of the same being the northwest corner of a survey of said Nicholas of 480,000 — & thence with the same 6,800 — crossing Huffs or Cains creek to the beginning subject to a reservation of five thousand acres reserved *reserved* in *in* the original for said tract for prior claims to have and to hold
90 the said tract or parcel of land to the said Anthony Lawson his heirs & assigns forever.

Witness the following signatures & seals this tenth day of May, 1856.

JOHN JOSEPH MAR*P* SCHMIT THORNFELD, [SEAL.]
By JAMES M. LAIDLEY, *Sp. Com'r.*
AUGUSTE MARIE FRANCOISE NOVERRE DE SERECOURT, [SEAL.]
By JAMES M. LAIDLEY, *Sp. Com'r.*
LOUIS ANTOINE DES VERGES DEMAUPERTUIS, [SEAL.]
By JAMES M. LAIDLEY, *Sp. Com'r.*
EMILIE DUMAS, [SEAL.]
By JAMES M. LAIDLEY, *Sp. Com'r.*

Witnesses:
P. K. McCOMAS.
J. S. SAMUELS.
WM. WORKMAN.

At Logan County Court, February Term, 1857.

This deed was duly proved by the oaths of Patrick K. McComas and J. S. Samuels, two of the subscribing witnesses thereto, and admitted to record.

Test: WM. STRATON, *Cl'k.*

WEST VIRGINIA, } *To wit:*
Logan County Court Clerk's Office, }

I, J. Cary Alderson, deputy, for S. S. Altizer, clerk of said court, do certify that the foregoing is a true copy of a deed from Jas. M. Laidley, sp. com'r, to Anthony Lawson, as the same appears of record in my said office in Deed Book "C," p. 509, &c.

Given under my hand and the seal of my said court this 7th day of August, 1896.

J. CARY ALDERSON, *Deputy,*
[SEAL.] For S. S. ALTIZER, *Clerk.*

EXHIBIT H. C. K. No. 13.

This deed made this 29th day of July, A. D. one thousand eight hundred and seventy-six, between Anthony Lawson and Ann Brook, his wife of Wythe county Virginia parties of the first part and James L. Black of Pittsburgh Pennsylvania and Abraham Suydam of Cabell

county West Virginia parties of the second part, witness-
91 eth that whereas the parties of the first part did on the 26th day of May A. D. 1874 for the consideration hereinafter mentioned by deed in writing signed, sealed and acknowledged for record and delivered to the parties of the second part conveyed unto the said parties of the second part the land hereinafter mentioned and described and whereas the parties of the second part have by accident lost or mislaid the deed aforesaid before the same was admitted to record, now, therefore in consideration of the premises aforesaid as well as for the consideration contained and set forth in said deed namely the sum of twenty-five thousand dollars, lawful money of the United States paid in the manner following to wit: Five thousand dollars in hand paid by the said Black the receipt of which is hereby acknowledged and twenty thousand dollars paid by notes of said Black and Suydam, as follows: Five thousand dollars by note at four months, five thousand dollars by note at five months and ten thousand dollars by note at six months with interest from date of said deed, have granted bargained and sold and conveyed and by these presents do grant, bargain sell and convey unto the said parties of the second —, their heirs and assigns the undivided three-fourth parts of a certain tract of land granted by the Commonwealth of Virginia by patent dated June 23rd A. D. 1795 unto Robert Morris of the city of Philadelphia assignee of Wilson Cary Nicholas and by said patent represented to contain five hundred thousand acres, be the same more or less said grantors hereby declare that they have no knowledge of the boundaries or of the number of acres therein contained, except what they derived from the language of said patent and only convey their rights derived under said patent and the deed of James M. Laidley special commissioner, dated May 10th, 1856 and recorded in the clerk's office of Logan county in Deed Book vol. C, and page 509, said land being wholly or chiefly situated in the counties of Logan, Wyoming
92 and McDowell, West Virginia and is bounded and described as follows, to wit: Beginning at two poplars and two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek a branch of Sandy river being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres, made for said Nicholas and Jacob Keney and with a line of the latter south thirty-three degrees west six thousand seven hundred and twenty poles, crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oakes on the northwest bank of Knox creek and thence leaving said survey west three thousand eight hundred and forty poles, crossing a creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to three poplars and a sugar tree by a small branch of Knox creek thence north eight thousand poles crossing Knox creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy

river and Guyandotte river and Gilbert creek twice a branch of the Guyandotte to *the* sugar trees in a bottom of said river and about twenty poles below the mouth of Gilbert's creek and thence north ten degrees, east four thousand four hundred and fifty poles crossing Guyandotte river several small branches and some ridges to pointers, thence east six thousand six hundred and twenty poles, crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same being the northeast corner of a survey of said Nicholas of 480,000 acres and thence with the same north six thousand eight hundred poles crossing Huffs or Caines creek to the place of beginning, reserving however
93 from this conveyance certain junior claims granted to said Lawson and also to Evermont Ward and his associates not exceeding altogether ten thousand acres also four thousand acres reserved in the original patent. The grantors hereby covenant that they will warrant specially the title to the property hereby conveyed.

Witness the following signatures and seals.

ANTHONY LAWSON. [SEAL.]
A. B. LAWSON. [SEAL.]

COMMONWEALTH OF VIRGINIA, }
County of Wythe, } *ss:*

I, George F. Crush, a notary public in and for the county of Wythe, State of Virginia, do certify that Anthony Lawson and Ann Brook, his wife, whose names are signed to the foregoing deed, bearing date of July 29th, 1876, personally appeared before me in the county aforesaid and acknowledged the foregoing instrument to be their act and deed, she, the said Ann Brook, being examined by me privily and apart from her said husband and having the said deed fully explained to her, she, the said Ann Brook *Hawson*, acknowled- the said deed to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 29th day of July, 1876.

GEO. F. CRUSH.

STATE OF WEST VIRGINIA:

Logan County Court Clerk's Office.

This deed from Anthony Lawson and Ann Brook Lawson to James L. Black and Abraham Suydam was this day presented to me in my office, and having been duly acknowledged by A. Lawson and Ann Brook Lawson before Geo. F. Crush, a notary public for Wythe county, Virginia, the same is duly admitted to record.
94 Given under my hand this 2d day of August, 1876.

JNO. CHAFIN, *Clerk*,
Notary Public. [SEAL.]

WEST VIRGINIA:

In Wyoming County Court Clerk's Office.

This deed was this day presented to me in my said office for record, and thereupon, together with the certificates thereunto annexed, is duly admitted.

Given under my hand and official seal this 7th day of October, 1879.

F. P. ROACH, *Deputy*,
For L. B. BLACK, *Clerk*.

A copy.
Teste: F. P. ROACH, *Deputy*,
For L. B. BLACK, *Clerk*.

A true copy from the records of my office, to wit, Deed Book " E," page 198.

Teste:
E. M. SENTER, *Deputy*,
For J. O. SANDERS,
[SEAL.] *Clerk Wyoming County Court, West Va.*

EXHIBIT H. C. K. No. 14.

This indenture made the ninth day of August in the year of our Lord one thousand eight hundred and seventy-six—1876—between Abraham Suydam and Gertrude M. Suydam his wife, of the city of Chicago, in the State of Illinois, parties of the first part and James L. Black of the city of Pittsburgh, county of Allegheny and State of Pennsylvania, parties of the second part: witnesseth that the said parties of the first part for and in consideration of the sum of twenty thousand dollars lawful money of the United States to them in hand paid by the said party of the second part the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed and by
95 these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns, the undivided three-eighths (3/8ths) of a certain tract of land situate on the head-waters of the Big Sandy, and Guyandotte rivers principally or wholly in the counties of Logan, Wyoming and McDowell, State of West Virginia, being a portion of a large tract of land granted by the Commonwealth of Virginia to Robert Morris of the city of Philadelphia Penna. by patent dated June 23rd 1795 assignee of Wilson Cary Nicholas and by said patent represented to contain five hundred thousand acres (500,000) including four thousand (4,000) acres of prior claims, which said entire tract of land is bounded and described as follows viz: Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War creek *or* branch of Sandy river being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenny and with a line of the latter south thirty-three (33°) degrees, west six thousand seven hundred and twenty poles, crossing a dividing ridge, and down War

creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oaks on the northwest bank of Knox creek and thence leaving said survey west three thousand eight hundred and forty poles, crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to three poplars and a sugar tree by a small branch of Knox creek, thence north eight thousand poles crossing Knox creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilberts creek twice a
96 branch of Guyandotte to the sugar trees in a bottom of said river and about twenty poles below the mouth of Gilberts creek, and thence north ten degrees east four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence east six thousand six hundred and twenty poles, crossing Guyandotte river and the several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of a survey of said Nicholas of 480,000 acres and thence with the same, south six thousand eight hundred poles crossing Huffs of Cains creek to the place of beginning the interest hereby conveyed being the undivided three-fourths of the same tract of land granted and conveyed by James M. Laidley, special commissioner, to Anthony Lawson by deed bearing date May 10th A. D. 1856 and recorded in the clerk's office of Logan county West Virginia in Deed Book vol. "C" p. 509, and by A. Lawson conveyed to A. Suydam & J. L. Black, jointly by deed dated May 26th 1874. The parties of the first part warrant the title to the property hereby conveyed specially.

Witness the following seals and signatures the day and year first above written.

ABRAHAM SUYDAM. [SEAL.]
GERTRUDE M. SUYDAM. [SEAL.]

Witness- to signing:
WILLIAM H. CLARKSON &
CHARLES NETTLETON,
As to G. M. S.

J. MILTON OLIVER AND
JNO. G. EARLE,
Witnesses As to Abraham Suydam.

STATE OF ILLINOIS, } *ss*:
County of Cook, }

I, J. Milton Oliver, a notary public aforesaid, duly appointed, commissioned, and qualified, do hereby certify that Abraham Suydam, whose name is signed to the foregoing instrument of writing, bearing date on the ninth (9th) day of August, in the
97 year one thousand eight hundred and seventy-six (1876), has this day acknowledged the same before me in my said county.

Given.

Given under my hand and notarial seal this tenth (10th) day of August, in the year one thousand eight hundred and seventy-six (1876).

J. MILTON OLIVER,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF NEW YORK, }
City & County of New York, } *ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia in and for the State of New York, do hereby certify that Gertrude M. Suydam, the wife of Abraham Suydam, whose names are signed to the foregoing instrument of writing bearing date on the ninth (9th) day of August, in the year one thousand eight hundred and seventy-six (1876), has this day acknowledged the same before me, in my said State; and I do further certify that the said Gertrude M. Suydam before me this day personally appeared in my said State, and, being by me examined privily and apart from her said husband and having the said instrument of writing fully explained to her, she, the said Gertrude M. Suydam, acknowledged the said instrument of writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this fourteenth day of August, in the year one *one* thousand eight hundred and seventy-six (1876).

CHARLES NETTLETON,
[SEAL.] *Commissioner for West Virginia in New York,*
117 *Broadway, New York City.*

In Logan County Court Clerk's Office, October 24th, 1876.

The foregoing deed from Abraham Suydam and wife to
98 James L. Black was this day duly presented to me in my office and was duly admitted to record.

Teste: JOHN CHAFIN, *Clerk.*

WEST VIRGINIA:

In Wyoming County Court Clerk's Office.

This deed was this day presented to me in my said office and thereupon, together with the certificates thereunto annexed, duly admitted to record.

Given under my hand and official seal this 7th day of October, 1879.

F. P. ROACH, *Deputy,*
For L. B. COOK, *Clerk.*

A copy.
Teste: F. P. ROACH, *Dep.,*
For L. B. COOK, *Clk.*

A true copy from the records.
Teste: E. M. SENTER, *Deputy,*
For J. O. SANDERS,
[SEAL.] *Clerk Wyoming County Court, West Va.*

EXHIBIT H. C. K. No. 15.

This indenture m-de this sixteenth day of February A. D. eighteen hundred and seventy-eight, between James L. Black of the city of Pittsburgh county of Allegheny and State of Pennsylvania party of the first part and William Reed of Allegheny county, and State aforesaid party of the second part witnesseth that the said party of the first part for and in consideration of the sum of thirteen thousand dollars lawful money of the United States the receipt of which is hereby acknowledged has released, remised and quit-claimed and by these presents does release, remise and quit-claim forever unto the party of the second part, his heirs and assigns forever all the right title and interest and claim of whatsoever kind in law and in equity of the party of the first part of and to all that certain tract of land granted
99 by the Commonwealth of Virginia unto Robert Morris assignee of Wilson Cary Nicholas of the city of Philadelphia Pa. by patent bearing date June 23 A. D. 1795 and by said patent represented to contain five hundred thousand acres (500,000) *acres* be the same more or less and including four thousand acres of prior claims. The party of the first part hereby declares that he has no knowledge of the boundaries or of the number of acres therein contained except what he derived from the language of said patent and only conveys his rights in the land hereinafter described, obtained from Anthony Lawson *et ux.* by deed dated July 26″ 1896 and recorded in the clerk's office in Logan county West Virginia in Deed Book F. page — and the deed of Abraham Suydam and wife dated August 9th 1876, and not hitherto conveyed to the party of the second part by the party of the first part by deed dated the 9th day of Oct. A. D. 1876. Said tract being wholly or principally situated in Logan, Wyoming and McDowell counties West Virginia and being bounded as follows to wit Beginning at two poplars and two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek a branch of Sandy river being a corner of a survey of said Nicholas, of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenney and with a line of the latter south thirty-three degrees west six thousand seven hundred and twenty poles crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oakes on the northwest bank of Knox creek and thence leaving said survey, west three thousand eight hundred and forty poles, crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to three poplars and a sugar tree by a small branch of Knox creek; thence
100 north eight thousand poles crossing Knox creek at about four miles Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same crossing Buffalo creek, Pigeon creek, and the dividing ridge between Sandy

river and Guyandotte and Gilberts creek twice a branch of the Gouandotte to the sugar trees in the bottom of said river and about twenty poles below the mouth of Gilbert creek and thence north ten degrees east four thousand four hundred and fifty poles, crossing Guyandotte river several small branches some ridges to pointers, thence east six thousand six hundred and twenty poles crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same being the northwest corner of a survey of said Nicholas of 480,000 acres and thence with the same south six thousand eight hundred poles, crossing Huffs of Canes creek to the place of beginning.

Witness the following signature and seal the day and year first above written.

JAMES L. BLACK. [SEAL.]

Attest: JOHN W. WILEY.

Received of William Reed the foregoing consideration in full.

JAMES L. BLACK.

Attest: JOHN W. WILEY.

COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Allegheny, City of Pittsburg, }

I, John W. Wiley, a notary public in and for said city, do certify that James L. Black, whose name is signed to the within and foregoing writing bearing date the sixteenth day of February, A. D. 1876, has this day acknowledged the same to be his act and deed before me this 18th day of February, A. D. 1878.

Given under my hand and official seal this 18th day of February, 1878.

[NOTARIAL SEAL.] JOHN W. WILEY,
Notary Public.

101 WEST VIRGINIA:

In the Office of the Clerk of the County Court of Wyoming County, this 19th Day of September, 1893.

The foregoing deed from James L. Black to William Reed, with certificate of acknowledgment thereto annexed, was this day presented in this office for record and is accordingly thereto admitted.

Teste: J. O. SANDERS, *Clerk.*

WEST VIRGINIA:

In Logan County Court Clerk's Office, September 20th, 1893.

The foregoing deed, together with the certificate of recordation of the clerk of Wyoming county court thereon endorsed, was this day duly admitted to record in my office aforesaid.

Teste: S. S. ALTIZER, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, September 26th, 1893.

This day the foregoing deed, with the certificates thereto annexed, was duly admitted to record.

Teste: JO. HIBBETTS, *Clerk.*

KENTUCKY:

In Pike County Court Clerk's Office, Sept. 30th, 1893.

This day the foregoing deed, with the certificates thereunto annexed, was duly admitted to record in my said office.

Teste: K. F. LESLIE, *Cl'k,*
By F. C. HATCHER, *D. C.*

WEST VIRGINIA:

In McDowell County Court Clerk's Office, October 3rd, 1893.

The foregoing deed is this day presented by me in my said office, and thereupon, together with the annexed certificates, is duly recorded.

Teste: J. F. JOHNSON, *D. C.*

102 EXHIBIT H. C. K. No. 16.

This indenture made the eighth day of October in the year of our Lord one thousand eight hundred and seventy-eight, between William Reed of the borough of Sewickley, county of Allegheny and State of Pennsylvania and Sarah J. Reed his wife of the first part, and "The Pittsburgh National Bank of Commerce" of the city of Pittsburgh, county and State as aforesaid of the second part,

Witnesseth, that the said party of the first — for and in consideration of the sum of thirty-six thousand dollars lawful money of the United States to them in hand well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part its successors and assigns, the undivided three-fourths (¾) part of a certain tract of land granted by the Commonwealth of Virginia unto Robert Morris assignee of Wilson Cary Nicholas of the city of Philadelphia Pennsylvania, by patent bearing date June 23d A. D. 1795 and by said patent represented to contain five hundred thousand acres (500,000) be the same more or less, and including four thousand (4,000) acres of prior claims.

The grantor hereby declares that he has no knowledge of the boundaries, or of the number of acres therein contained, except what he derived from the language of said patent, and only conveys his rights derived under said patent, and the deed of Anthony Lawson *et ux.*, bearing date July 29th A. D. 1896 (given to replace a deed lost or mislaid dated May 26 A. D. 1874) and recorded in the clerk's office of Logan county West Virginia in Deed Book F page 316, and

the deed of Abraham Suydam *et ux.*, dated August 9th A. D. 1876, and the deed of James L. Black dated the 9th day of October A. D. 1876.

103 Said tract being wholly or principally situated in the counties of Logan, Wyoming and McDowell State of West Virginia and being bounded and described as follows, viz:

Beginning at two poplar and two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenny and with a line of the latter south thirty-three degrees (33°) west six thousand seven hundred and twenty (6,720) poles crossing a dividing ridge, and down War creek to the mouth crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks, on the northwest bank of Knox creek, and thence leaving said survey, west three thousand eight hundred and forty (3,840) poles crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peters creek a branch of Sandy river to three poplars and a sugar tree by a small branch of Knox creek, thence north eight thousand (8,000) poles crossing Knox creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy river and Guyandotte river and Gilbert creek twice a branch of the Guyandotte to the sugar trees in a bottom of said river and about twenty poles below the mouth of Gilberts creek and thence north ten degrees (10°) east four thousand four hundred and fifty (4,450) poles, crossing Guyandotte river, several small branches and some ridges to pointers, thence east six thousand six hundred and twenty (6,620) poles, crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northeast corner

104 of a survey of said Nicholas of 480,000 acres, and thence with the same south six thousand eight hundred (6,800) poles crossing Huffs or Cains creek to the place of beginning.

Excepting however from this conveyance certain junior claims granted to said Lawson and also Evermont Ward and his associates not exceeding in the aggregate twenty thousand (20,000) acres.

And the parties of the first part hereby covenant that they will warrant specially the title to the property hereby conveyed.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM REED. [SEAL.]
SARAH J. REED. [SEAL.]

Signed, sealed, and delivered in presence of—

O. S. WIDE.
WILLIAM F. ROBB.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

On the 5th day of November, A. D. 1878, before me, a notary public, duly commissioned, came the above-named William Reed and Sarah J. Reed, his wife, and acknowledged the above indenture to be their act and deed, and desired the same to be recorded as such, she, the said Sarah J. Reed, being of full age and by me examined separate and apart from her said husband, and the contents of the said deed being first made known to her, declared that she did, of her own free will and accord sign and seal and as her act and deed deliver the same without any coercion or compulsion of her said husband.

Witness my hand and seal the day and year first above written.

WILLIAM F. ROBB,
Notary Public.

[NOTARIAL SEAL.]

105 Received, the date of the above indenture, of the above-named "The National Bank of Commerce" the sum of thirty-six thousand dollars, the consideration money in full.

WILLIAM REED.

Witness:
H. G. EAKINS.

In Logan County Court Clerk's Office, March 26th, 1879.

The foregoing deed from William Reed and Sarah J. Reed to "The National Bank of Commerce" was this day presented to me in my office, and the same, together with the certificate of acknowledgment thereon written, was duly admitted to record.

[SEAL.] JOHN CHAFIN, *Clerk.*

WEST VIRGINIA:

In Wyoming County Court Clerk's Office.

This deed was this day presented to me in my said office, and thereupon, together with the certificates thereunto annexed, is duly admitted to record.

Given under my hand and official seal this 7th day of October 1879.

F. P. ROACH, *Deputy,*
[SEAL.] For L. B. COOK, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, September 26th, 1893.

The foregoing deed, together with the certificates thereto annexed was this day duly admitted to record.

Teste: JO. HIBBETTS, *Clerk.*

KENTUCKY:

In Pike County Court Clerk's Office, September 30th, 1893.

This deed, with the annexed certificates, was this day duly admitted and recorded in my said office.

Teste: K. F. LESLIE, *Clerk*,
By F. C. HATCHER, *D. C.*

106 WEST VIRGINIA:

In McDowell County Court Clerk's Office, October 3rd, 1893.

The foregoing deed was this day presented to me in said office for record and thereupon, together with the annexed certificates, duly recorded.

Teste: J. F. JOHNSON, *D. C.*

EXHIBIT H. C. K. No. 17.

This indenture, made the 23rd day of June, in the year of our Lord one thousand eight hundred and ninety-three, by and between The Pittsburgh National Bank of Commerce, a banking association organized and existing under the acts of Congress providing for national banking associations, having its domicile in the city of Pittsburgh, county of Allegheny, in the western district of Pennsylvania, party of the first part and David W. Armstrong, of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of fifty-nine hundred and ninety dollars ($5,990.00), and other valuable considerations, lawful money of the United States of America, unto it well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said party of the second part, his heirs and assigns forever,

The undivided three-fourths (¾) part of a certain tract of land granted by the Commonwealth of Virginia unto Robert Morris, assignee of Wilson Cary Nicholas, of the city of Philadelphia, Pennsylvania, by patent bearing date June 23rd, A. D. 1795, and by said patent represented to contain five hundred thousand acres (500,000) be the same more or less, and including four thousand (4,000)
107 acres of prior claims, said tract being wholly or principally situated in the counties of Logan, Wyoming and McDowell, State of West Virginia and being bounded and described as follows, viz:

Beginning at two poplar and two chestnut trees on a branch of Guyandotte river and six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenny and with a line of the latter south thirty-three degrees (33°) west six thousand seven hundred and twenty (6,720) poles crossing a dividing ridge, and down War creek to the

mouth crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oaks, on the northwest bank of Knox creek, and thence leaving said survey, west three thousand eight hundred and forty (3,840) poles crossing a creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Peters creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek; thence, north eight thousand (8,000) poles, crossing Knox creek at about four miles, and Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy river and Guyandotte river and Guilbert creek twice a branch of the Guyandotte, to the sugar trees in a bottom of said river and about twenty poles below the mouth of Guilbert creek, and thence north ten degrees (10°) east, four thousand four hundred and fifty (4,450) poles, crossing Guyandotte river, several small branches and some ridges to pointers; thence east, six thousand six hundred and twenty (6,620) poles, crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northeast
108 corner of a survey of said Nicholas of 480,000 acres; and thence, with the same south six thousand eight hundred (6,800) poles, crossing Huffs or Cains creek to the place of beginning.

The party of the first part, hereby declares that it has no knowledge of the boundaries of said tract, or of the number of acres therein contained, except what it derived from the deed of William Reed, and Sarah J. Reed, his wife, to said party of the first part, dated the 8th day of October, 1878, and recorded in said Wyoming county, in Deed Book E, pages 208, etc., and recorded also in said Logan county, in Deed Book F, page 541.

Together with all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, in law, equity or otherwise howsoever, of, in and to the same and every part thereof. And the said party of the first part will forever warrant and defend the right, title and interest hereby released against the claims of any and all persons claiming by, though, or under any deed, mortgage or other conveyance made by it, and against the claims of no other person or persons whatsoever.

In witness whereof, the said Pittsburgh National Bank of Commerce, by virtue of a resolution of its board of directors, at a meeting held on the 8th day of April, 1893, has caused to be fixed to these presents its common and corporate seal, duly attested by its proper officers, who have hereunto subscribed their names.

THE PITTSBURGH NATIONAL BANK OF COMMERCE.

[CORPORATE SEAL.]

J. T. COLVIN, *Pres.*

C. I. WADE, *Cash'r.*

Received the day of the date of the foregoing indenture of the above-named David W. Armstrong the sum of fifty-nine hundred

and ninety dollars ($5,990.00), the full consideration in the
109 said deed recited.

J. T. COLVIN, *Pres.*
C. I. WADE, *Cash'r.*

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

I, H. T. Morris, a notary public in and for said county and State, residing in Pittsburgh, do hereby certify that before me personally appeared, in my said county, Charles I. Wade, cashier of the said The Pittsburgh National Bank of Commerce, who, being duly sworn according to law, says that he was personally present at the execution of the above indenture and saw the common and corporate seal of the said corporation duly affixed thereto; that the seal affixed thereto is the common and corporate seal of the said corporation; that the above indenture was duly sealed and delivered by the president and cashier of the said banking association as and for the act and deed of the said corporation for the uses and purposes therein mentioned, and that the name of this affiant as cashier and of J. T. Colvin as president of the said bank, subscribed to the above indenture in attestation of its execution and delivery, are of their respective handwritings.

And I do hereby further certify that J. T. Colvin, president of the Pittsburg National Bank of Commerce, whise name is signed to the writing above, bearing date on the 23 day of June, 1893, has this day acknowledged the same before me, in my office, in the county aforesaid, as and for the act of the Pittsburg National Bank of Commerce aforesaid.

Given under my hand this 27 day of June, 1893. Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] H. T. MORRIS,
Notary Public.

110 WEST VIRGINIA:

In the Clerk's Office of the County Court of Wyoming County, the 19th Day of Sept., 1893.

The foregoing writing, together with the certificate of acknowledgment thereto annexed, was this day presented in this office for record and is accordingly thereto admitted.

Teste: J. O. SANDERS, *Cl'k.*

WEST VIRGINIA:

In Logan County Court Clerk's Office, September 20th, 1893.

The foregoing deed, together with the certificate of recordation of the clerk of Wyoming county court thereon endorsed, was this day duly admitted to record in my office aforesaid.

Teste: S. S. ALTIZER, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, September 26th, 1893.

This deed, together with the certificates thereon endorsed, was this day duly admitted to record in my said office.

Teste: JO. HIBBETTS, *Clerk.*

KENTUCKY:

In the Clerk's Office of the County Court of Pike County, this October the 2d, 1893.

This deed, together with the certificates thereon endorsed, having been this day presented for record, the same are hereby duly admitted to record in my office.

Teste: K. F. LESLIE, *Clerk,*
By F. C. HATCHER, *D. C.*

WEST VIRGINIA:

In McDowell County Court Clerk's Office, October 3rd, 1893.

This deed is this day presented to me in my said office, and thereupon, together with the annexed certificates, is duly recorded.

Teste: J. F. JOHNSON, *D. C.*

111 EXHIBIT H. C. K. No. 18.

This indenture made and entered into this fifth day of August, 1893, by and between Davis W. Armstrong, widower, of the city of New York, State of New York, party of the first part, and Henry C. King, of the city of New York, in the State of New York, party of the second part, witnesseth:

That for and in consideration of the sum of ten dollars, in hand paid by the said Henry C. King to the said David W. Armstrong, the receipt whereof is hereby acknowledged, the said party of the first part has bargained and sold and does hereby grant, bargain, sell and convey unto the said party of the second part, all the right, title and interest of the party of the first part in and to that certain lot, parcel or tract of land granted by the State of Virginia to Robert Morris by patent dated the 23rd day of June, 1795, and described in said patent as containing five hundred thousand acres (500,000) of land now situate, lying and being in Pike county, Kentucky, Buchanan county, Virginia, and Logan, Boone, Wyoming and McDowell counties, West Virginia, which said tract is more particularly described in said patent as follows, to wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of Wilson Cary Nicholas of four hundred and eighty thousand acres (480,000) and a survey of three hundred and twenty thousand acres (320,000) made for said Nicholas and Jacob Kenney and with a line of the latter S. 33 W. 6,720 poles, crossing a dividing ridge and down War

creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oaks on the northwest bank of Knox's creek, and thence
112 leaving said survey W. 3,840 poles, crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence N. 8,000 poles crossing Knox's creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about 20 poles below the mouth of Gilbert's creek and thence N. 10 E. 4,450 poles, crossing Guyandotte river, several small branches and some ridges to pointers, thence E. 6,620 poles crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of the survey of said Nicholas's of four hundred and eighty thousand acres (480,000) and thence with the same S. 6,800 poles crossing Huff's or Cain creek to the beginning.

To have and to hold the aforesaid lands and all the right, title and interest of every description legal or equitable of the party of the first part of in or to the same and each and every part thereof, and all the right, privileges and appurtenances thereto in anywise appertaining and belonging, unto the party of the second part, his heirs and assigns, forever.

And also, that the said party of the first part and his heirs and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the above-granted premises, by, from, under or in trust for him, or them shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and
113 execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or intended so to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns or his or their counsel learned in the law, shall be reasonably devised, advised or required.

And the said David W. Armstrong and his heirs, the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part, his heirs and assigns against the said party of the first part and his heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same or any part thereof by, from or under him, them or any of them, shall and will warrant and by these presents, forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

DAVID W. ARMSTRONG. [SEAL.]

Signed, sealed, and delivered in the presence of—

FRANK RUDD.
B. C. HOWELL.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Frank Rudd, a notary public for the county of New York aforesaid, in the State of New York, do certify that this instrument of writing above, bearing date the fifth day of August, 1893, from David W. Armstrong, widower, of the city of New York, was this day produced before me by the said party and acknowledged by the said David W. Armstrong before me, in my county aforesaid,
114 to be his act and deed.

Given under my hand this fifth day of August, 1893.

FRANK RUDD,
Notary Public, Kings Co.

[SEAL.]

Certificate filed in New York Co.

WEST VIRGINIA:

In Wyoming County Court Clerk's Office, this 19th Day of September, 1893.

The foregoing deed from David W. Armstrong to Henry C. King, with certificate of acknowledgment thereto annexed, was this day presented in this office for record and is accordingly thereto admitted.

Teste: J. C. SANDERS, *Clerk.*

WEST VIRGINIA:

In Logan County Court Clerk's Office, September 20th, 1893.

The foregoing deed, together with the certificate of recordation of the clerk of Wyoming county court thereon endorsed, was this day duly admitted to record in my office aforesaid.

Teste: S. S. ALTIZER, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, September 26th, 1893.

This deed, with the annexed certificates, was this day duly admitted to record in my said office.

Teste: JO. HIBBETTS, *Clerk.*

creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles and crossing several ridges to four white oaks on the northwest bank of Knox's creek, and thence
112 leaving said survey W. 3,840 poles, crossing a creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence N. 8,000 poles crossing Knox's creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about 20 poles below the mouth of Gilbert's creek and thence N. 10 E. 4,450 poles, crossing Guyandotte river, several small branches and some ridges to pointers, thence E. 6,620 poles crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of the survey of said Nicholas's of four hundred and eighty thousand acres (480,000) and thence with the same S. 6,800 poles crossing Huff's or Cain creek to the beginning.

To have and to hold the aforesaid lands and all the right, title and interest of every description legal or equitable of the party of the first part of in or to the same and each and every part thereof, and all the right, privileges and appurtenances thereto in anywise appertaining and belonging, unto the party of the second part, his heirs and assigns, forever.

And also, that the said party of the first part and his heirs and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the above-granted premises, by, from, under or in trust for him, or them shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and
113 execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or intended so to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns or his or their counsel learned in the law, shall be reasonably devised, advised or required.

And the said David W. Armstrong and his heirs, the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part, his heirs and assigns against the said party of the first part and his heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same or any part thereof by, from or under him, them or any of them, shall and will warrant and by these presents, forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

DAVID W. ARMSTRONG. [SEAL.]

Signed, sealed, and delivered in the presence of—

FRANK RUDD.
B. C. HOWELL.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Frank Rudd, a notary public for the county of New York aforesaid, in the State of New York, do certify that this instrument of writing above, bearing date the fifth day of August, 1893, from David W. Armstrong, widower, of the city of New York, was this day produced before me by the said party and acknowledged by the said David W. Armstrong before me, in my county aforesaid,
114 to be his act and deed.

Given under my hand this fifth day of August, 1893.

FRANK RUDD,
Notary Public, Kings Co.

[SEAL.]

Certificate filed in New York Co.

WEST VIRGINIA:

In Wyoming County Court Clerk's Office, this 19th Day of September, 1893.

The foregoing deed from David W. Armstrong to Henry C. King, with certificate of acknowledgment thereto annexed, was this day presented in this office for record and is accordingly thereto admitted.

Teste: J. C. SANDERS, *Clerk.*

WEST VIRGINIA:

In Logan County Court Clerk's Office, September 20th, 1893.

The foregoing deed, together with the certificate of recordation of the clerk of Wyoming county court thereon endorsed, was this day duly admitted to record in my office aforesaid.

Teste: S. S. ALTIZER, *Clerk.*

VIRGINIA:

In Buchanan County Court Clerk's Office, September 26th, 1893.

This deed, with the annexed certificates, was this day duly admitted to record in my said office.

Teste: JO. HIBBETTS, *Clerk.*

KENTUCKY:

In Pike County Court Clerk's Office, October 2nd, 1893.

This deed, with the annexed certificates, was this day duly admitted and recorded in my said office.

Teste: K. F. LESLIE, *Clerk*,
By F. C. HATCHER, *D. C.*

115 WEST VIRGINIA:

In McDowell County Court Clerk's Office, October 3rd, 1893.

The foregoing deed was this day presented to me in said office for record, and thereupon, together with the annexed certificates, duly recorded.

Teste: J. F. JOHNSON, *D. C.*

EXHIBIT H. C. K. No. 19.

STATE OF WEST VIRGINIA,
Auditor's Office, Charleston.

I, Isaac V. Johnson, auditor of the State of West Virginia, do certify that I have carefully examined the record books of forfeited lands returned and kept by me in said office, as required by law, for the counties of Logan, Mingo, Wyoming, and McDowell, in said State, from and including the year 1883 to this date, 1895, and there does not appear on said record books a tract of 500,000 acres of land or any part thereof or any other tract forfeited for any cause in the name of either Robert E. Randall, trustee; Robert E. Randall, A. D. Maupertures, Jno. R. Reed; Jno. R. Reed, trustee; John V. Le Moyne, David W. Armstrong, or Henry C. King.

I further certify that there are no lands from any of said counties entered on the record of forfeited lands of this office for either or any of said years in the name of either or any of said parties.

I do further certify that I have carefully examined the record books of delinquent lands returned and kept by me in said office, as required by law, of the counties of Logan, Mingo, Wyoming, and McDowell, in said State, from and including the year 1883 to
116 this date, 1895, and there does not appear on said record books a tract of 500,000 acres of land or any part thereof or any other tract delinquent for any cause in the name of either Robert E. Randall; Robert E. Randall, trustee; A. D. Maupertures, John R. Reed; John R. Reed, trustee; John V. Le Moyne, David W. Armstrong, or Henry C. King.

I further certify that there are no lands from any of said counties entered on the records of delinquent lands of this office for either or any of said years in the name of either or any of said parties.

I further certify that there does not appear upon said records of forfeited or delinquent land books any tract of 375,000 acres of land or of 100,000 acres of land in the name of the Pittsburg National

Bank of Commerce, David W. Armstrong, or Henry C. King for either or any of said years.

Given my hand and official seal this 3d day of July, 1896.

I. V. JOHNSON, *Auditor*,
By WM. A. CRACRAFT,
Chief Clerk.

Demurrer and Answer to Amended Bill.

(Filed July 14, 1896.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING, Complainant,
vs.
PANTHER LUMBER COMPANY and J. P. KROLL, Defendants.
} Demurrer and Answer of Defendants to Amended Bill.

The defendants come and demur to the amended bill of complainant and say that the matters and things alleged in said amended bill are not sufficient in law or equity to maintain the same,
117 and among other things, for special causes of demurrer, the defendants say:

First. That by the said amended bill the complainant therein makes an entirely new case from the original bill.

Second. That all matters therein set up might and ought to be set up under a general replication to the answers of the defendants to the original bill in this cause, had such replication been filed at the proper time under the rules of this court.

Third. Complainant admits the fact in said amended bill that his title to the land claimed by him in the original and amended bills was put to a test in the action of ejectment of H. C. King, plaintiff (complainant here) and M. B. Mullins and others, defendants, in the manner and form and with the result set up in the amended answer of demurrants, but the said complainant by his said amended bill seeks to set up matters *dehors* the record to evade the force of the verdict and judgment against him in said action of ejectment, but these statements and allegations of said amended bill are silenced by the fact that such verdict and judgment remain unreversed. Wherefore demurrants pray judgment of the court, &c.

J. P. KROLL.

DISTRICT OF WEST VIRGINIA,
County of Cabell,
} *To wit:*

J. P. Kroll this day personally appeared before me, T. J. Bryan, a United States commissioner in and for said county and State, and made oath before me, in said county, that he is one of the defendants in the above-styled cause and is Secretary of the defendant

Panther Lumber Company; that the foregoing demurrer is not interposed for delay.

[Corporate Seal P. L. Co.]

Given under my hand this the — day of July, 1896.

T. J. BRYAN, [SEAL.]
U. S. Commissioner.

118 STATE OF VIRGINIA, } *To wit:*
County of Tazewell, }

I, the undersigned, of counsel for the demurrants, do certify that in my opinion the above demurrer is well founded in point of law.

Given under my hand this 10th day of July, 1896.

S. C. GRAHAM.

If the foregoing demurrer be overruled and the defendants, Panther Lumber Company and J. P. Kroll, are required to answer said amended bill, then they beg to be allowed to jointly answer and say: That it is true, as alleged in said bill and as shown by the record, that your respondents did file their answer to the original bill, which bill, having been amended at the time the preliminary injunction was granted, necessitated an amended answer, and such amended answer was filed by your respondent Panther Lumber Company. Your respondents refer to, adopt, and reiterate the statements made in their said answers the same as if they were set out *in extenso* in said answer, and pray that they may be considered an answer to said amended bill.

The first subject treated of in the amended bill now here answered relates to the attack made by respondents upon the pretended location and boundaries of the land claimed by the complainant, and amount simply to a replication to the position taken by the respondents upon this branch of the case in their former answers; they therefore beg to be allowed to adopt their statements especially relating thereto in their former answers.

The next subject treated of relates to papers which complainant contends form links in the chain of his title, and exhibits them.

Respondents beg to suggest again, that this is in its nature merely a replication to the former answers of respondents, or of evi-
119 dence to sustain such replication; that their inspection and validity are questions for the court, and that under the present attitude of the case these papers and exhibits cut no figure, but are irrelevant and immaterial.

The third and last branch treated of in said amended bill relates to the attack made upon complainant's title upon the ground that it was forfeited—annihilated—for the failure of complainant and those under whom he claims to have the same placed upon the land books of any of the counties in West Virginia where the land lies, and to pay taxes thereon as required by the constitution and laws of the State of West Virginia. Complainant in his amended bill seems still to question these prerogative rights of the State, and to treat as of small consequence the opinion and judgment of the learned judge who presided at the trial of the action of ejectment of

King *vs.* Mullins and others, wherein it was determined that the title to this land was forfeited.

Respondents, of course, cannot add anything to the weight of this decision by comment or statement, but as all of the other injunctions awarded against persons claiming lands within the boundaries of complainant's claim have been justly dissolved on account of said judgments, respondents pray that the same justice be accorded to them.

And, having now fully answered, respondents pray that the injunction heretofore awarded be dissolved, and the complainant's bills be dismissed; and will ever pray, &c.

[CORPORATE SEAL.] PANTHER LUMBER COMPANY AND J. P. KROLL,
By BROWN, JACKSON & KNIGHT AND HENRY & GRAHAM, *Attorneys.*

The defendant The Panther Lumber Company in the above-styled cause, to authenticate this its answer, has caused its
120 corporate seal to be affixed, attested by its secretary.

J. P. KROLL, *Secretary.*

STATE OF WEST VIRGINIA, *County of McDowell,* } *To wit:*

J. P. Kroll, a stockholder in the defendant corporation, whose answer is above set out, and also joins in said answer, being sworn, says that the facts and allegations in said answer are true, except so far as they are therein stated upon information derived from others, and so far as the statements therein are made upon such information he believes them to be true.

——— ———.

Taken, sworn to, and subscribed before me, the undersigned, a notary public in and for the county and State aforesaid, this the 13 day of July, 1896.

T. J. BRYAN, [SEAL.]
United States Commissioner.

And at another day, to wit, on the 18th day of July, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs. } In Chancery.
PANTHER LUMBER COMPANY *et als.*

This day came the complainant, by his counsel, and the defendants, by their counsel, and the exceptions of complainant to the answer and amended answer of defendants hereto filed being heard and examined by the court and being argued by counsel and the tenth exception to said answer being withdrawn, the court doth overrule the second, third, and eighth exceptions to said answer and the first exception to the amended answer, and doth adjudge

and consider that all the other exceptions are valid, and
121 orders that the same be sustained, and that the matters so excepted to in said answer and amended answer be stricken therefrom, and that complainant recover of defendant his costs upon said motion, including counsel fee of $20.00; and the court doth further give leave to the defendants to amend said answer and amended answer upon the face thereof, which is accordingly done in open court.

And thereupon, upon motion of complainant, the demurrer of defendants to complainant's amended and supplemental bill is set down for argument, and, being argued by counsel for the respective parties, it is by the court ordered that the same be, and is hereby, overruled at the cost of defendant-; and thereupon complainant tendered his replication to the answer and amended answers to complainant's bill, and the same is ordered to be filed, and the said answer to complainant's amended bill, filed in the clerk's office July 14, 1896, is ordered to stand as the answer of defendants to said amended bill, and complainant is given thirty days within which to file the exhibits mentioned in his bill and not already filed.

Complainant's Replication.

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING
vs. } In Equity.
PANTHER LUMBER COMPANY *et al.*

The replication of complainant to the answer and amended answer of defendants to complainant's bill and their answer to complainant's amended and supplemental bill.

This repliant, saving unto himself all advantage of exception that may be taken of the manifold errors, uncertainties, and
122 insufficiencies of said answer of said defendants, for replication thereto says that he does and will maintain and prove his said bill to be true and sufficient in law to be answered unto by said defendants, and that the said answers of defendants are uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in said answers contained material or effectual in the law to be replied unto, traversed, confessed, or avoided is true; all which matters and things this repliant is ready to aver and maintain and prove as this honorable court shall direct and as he hath in and by his bill already prayed.

MAYNARD F. STILES,
Solicitor for Complainant.

And at the same day, to wit, on the 18th day of July, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* } In Chancery.

This cause came on this day to be further heard upon the motion of defendants to dissolve the injunction awarded against them herein on 1st day of August, 1895, and was argued by counsel.

And it appearing to the court from the pleadings and proofs that the tract of land claimed by complainant has been omitted from the land books of the several counties wherein the same is situate, and has not been charged thereon with taxes in the names of any of the persons under whom complainant claims for the period of five successive years since 1869, to wit, from the year 1883 to the year 1895, and it having been held by this court in the case of H. C. King *vs.* M. B. Mullins *et als.*, recently tried in this court, the hon-
123 orable circuit judge presiding, that such omission of said land from the land books operated to forfeit and divest the title to said tract of land and vest the same absolutely in the State of West Virginia, under the provisions of the constitution of said State, before the purchase of the same by complainant, and that therefore complainant has no title to said land, the court is of the opinion to dissolve said injunction, reserving the right to render and file herein an opinion in writing upon said motion:

It is therefore ordered, adjudged, and decreed that the said injunction be, and the same is hereby, dissolved, and that the said bills be dismissed, and that the defendants recover of complainant their costs; but it is further ordered that this decree stand suspended for the period of thirty days from this date to enable complainant to appeal from and supersede the same if he shall desire so to do.

Petition for Appeal and Assignment of Errors.

(Filed August 17, 1896.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* } In Chancery.

To the honorable judges of said court:

The complainant in the above-entitled cause, feeling himself aggrieved by a final decree of said court made and entered on the 18th day of July, 1896, dissolving the injunction heretofore awarded against defendants and dismissing complainant's bill of complaint herein, petitions your honors and shows—

That said decree is erroneous and against the just rights of
124 complainant, this petitioner, and exhibits unto your honors the following assignment of errors committed by the court in and by said decree, to the prejudice of the rights of petitioner, viz:

First. The court erred in dissolving said injunctions and dismissing said bill upon the ground that the title claimed by complainant to the land in question was or had been forfeited to the State of West Virginia under the provisions of the constitution thereof; because the provisions of said State constitution purporting and attempting to forfeit and divest the title to land out of the owner thereof and vest the same in the State or in some other person; because of the omission of such land from the land books are wanting in due process of law, and are repugnant to and in conflict with art. 1, section X, 1, of the Constitution of the United States, and art. XIV, sec. 1, of the amendments to said constitution, and because said provisions are repugnant to and in conflict with other paramount and control-ing provisions of said State constitution, viz., art. III, 4, 5, 9, 10, and art. V, 1, thereof, and are therefore null and void.

Second. The court erred in holding the title of complainant or of his predecessors to be forfeited, and in dismissing the bill because thereof; because (as is alleged in the bill and not disputed by defendants, and as the fact is) no forfeiture of the title of complainant, or of those under whom he claims, to said land, has ever been decreed, adjudged, declared, or determined in any proceeding for the purpose, and could not be adjudged or enquired of collaterally, as in this suit, and could only be proven in this suit, if the fact existed, by the record of an adjudication thereof in a proper, direct proceeding thereof before a competent tribunal.

125 Third. The court erred in holding that any forfeiture of the title claimed by complainant had occurred, because there is nothing in the pleadings or exhibits (the only proof in the case) to warrant the court in so holding, and because the proof shows that there was no forfeiture, and that none was claimed by the State (*vide* auditor's certificate filed by complainant).

Fourth. The court erred in holding that the land claimed by complainant had been omitted from the land books of the several counties wherein the same is situate since the year 1883, and that no taxes had been paid thereon by complainant or those under whom he claims, because there is no competent evidence in the case to warrant the court in so holding.

Fifth. The court erred in dissolving said injunction and dismissing said bill on the ground of the *of the* forfeiture of the title claimed by complainant, because, as is alleged in the bill and as is undisputed by defendants, complainant purchased said land for valuable consideration in good faith and without knowledge or notice of any forfeiture or pretended forfeiture or of any pretended claim or interest of said State of West Virginia, and the said State and all others are estopped to set up title in said State against complainant.

Sixth. The court erred in dissolving the injunctions and dismissing the bill because the bill shows perfect title to the land and to the relief sought, and the answer does not deny the commission of any of the acts charged against defendants, but attempts to avoid them by matters that if they were true would constitute no defense.

Seventh. The court erred in dismissing said bill because the same was in terms ancillary to an action of ejectment then and still pend-

ing in said court, in which action alone the question of title should have been adjudicated, complainant having shown an appar-
126 ently good title by his bill.

Eighth. The court erred in dismissing the bill or dissolving the injunctions upon the case disclosed by the record.

And petitioner further says that the value of the matter in controversy in said cause exceeds the sum of five thousand dollars, exclusive of interest or costs.

That said cause is a case that involves the *the* construction or application of the Constitution of the United States, and that said cause is a case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Wherefore petitioner prays that an appeal to the Supreme Court of the United States be granted and allowed unto petitioner; that said decree of July 18th, 1896, be by said Supreme Court reviewed and reversed; that a transcript of the record and proceedings upon which said decree was made and entered be transmitted to said Supreme Court, at Washington, D. C., and that pending such appeal the said decree be suspended and superseded.

And petitioner herewith proffers to give bond in this behalf as this court may require.

And petitioner will ever pray, &c.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Counsel for Petitioner.

Appeal Bond.

(Filed August 17, 1896.)

Know all men by these presents that we, Henry C. King, as principal, and Sidney D. Freshman, as surety, both of the State of New York, are held and firmly bound unto Panther Lumber Com-
127 pany, a corporation organized under the laws of the State of West Virginia, and Jerome P. Kroll, of said State, in the full and just sum of three thousand — to be paid to the said Panther Lumber Company and Jerome P. Kroll, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit depending in said court between the said Henry C. King and the said Panther Lumber Company and Jerome P. Kroll, a decree was rendered against the said Henry C. King, and the said Henry C. King having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Panther Lumber Company and Jerome P. Kroll, citing and admonishing them

to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Henry C. King shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

And it is stipulated that in the event suit should be brought upon this bond, service of process against us therein upon any attorney of record of said King in the above suit wherein this bond is given shall be deemed and held of the same force and effect as if such service had been had upon us or either of us in person within the State of West Virginia.

128 HENRY C. KING, [SEAL.]
By MAYNARD F. STILES,
His Attorney in Fact and of Record.
SIDNEY D. FRESHMAN, [SEAL.]
By MAYNARD F. STILES,
His Attorney-in-fact.

Sealed and delivered in presence of, and approved by—
J. J. JACKSON,
U. S. Dist. Judge.

Aug. 17th, 1896.

Power of Attorney.

(Filed August 17, 1896.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* } In Chancery.

Know all men by these presents that I, Henry C. King, of the city of New York, State of New York, complainant in the above-entitled cause, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Maynard F. Stiles, resident at Charleston, West Virginia, my true and lawful attorney for me and in my name, place, and stead to sign, seal, and deliver any bond or bonds that may be necessary or proper or that may be required by the court to perfect appeal from and supersedure of the order and decree made in said cause on the 18th day of July, 1896, dissolving the injunction heretofore awarded therein and dismissing complainant's bill in said suit, or any other order made or that may be made in said cause, and to make any agreement or stipulation that may be required for service of process against me in any suit or suits that may be brought upon said bond or bonds.

Giving and granting unto my said attorney full power and authority to do and perform every act or thing that may be
129 needful or proper to be done in the premises as fully and to the same effect as I myself could do the same if personally

present, hereby ratifying and confirming all that my said attorney shall lawfully do in the premises.

Given under my hand and seal this 10th day of August, 1896.

HENRY C. KING. [SEAL.]

Witness:
SAM'L A. PATTERSON.

STATE OF NEW JERSEY, *County of Monmouth*, } ss:

Be it remembered that on this tenth day of August, eighteen hundred and ninety-six, before me, the subscribed, a notary public of New Jersey, personally appeared Henry C. King, who I am satisfied is the grantor in the annexed instrument named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

SAM'L A. PATTERSON,
Notary Public of N. J.

[NOTARIAL SEAL.]

Power of Attorney.

(Filed August 17, 1896.)

In the Circuit Court of the United States for the District of West Virginia.

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* } In Chancery.

Know all men by these presents that I, Sidney D. Freshman, of the State and city of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Maynard F. Stiles my true and lawful attorney for me and
130 in my name, place, and stead, as surety for the said Henry C. King, to sign, seal, and deliver any and all necessary and proper bonds that may be required upon appeal from and supersedure of the order or decree made in said cause on the 18th day of July, 1896, dissolving the injunction and dismissing complainant's bill in said cause, and to make and execute any agreement or stipulation in connection with said bond that may be necessary or proper for service of process upon me in any suit or action that may be brought upon said bond.

Giving and granting unto my said attorney full power to do and perform every act and thing needful or proper to be done in the premises as fully and to the same intent and effect as I myself could do the same if personally present; and I hereby ratify, confirm, and adopt as my act and deed all that my said attorney may lawfully do or may have done in the premises.

Witness my hand and seal this 10th day of August, 1896.

SIDNEY D. FRESHMAN. [SEAL.]

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

On this 10 day of August, in the year one thousand eight hundred and ninety-six, before me, J. W. Anderson, a notary public in and for said Los Angeles county, residing therein, duly commissioned and sworn, personally appeared Sidney D. Freshman, known to me to be the person described in, whose name is subscribed to, and who executed the within instrument, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the county of Los Angeles, the day and year in this certificate first above written.

J. W. ANDERSON,

[NOTARIAL SEAL.] *Notary Public in and for the County of Los Angeles, State of California.*

131 And at another day, to wit, on the 17th day of August, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
PANTHER LUMBER COMPANY, a Corporation, *et al.* } In Chancery.

This day came again the complainant, by his counsel, and presented his petition and assignment of errors charged to have been committed by the court in and by the decree made and entered in this cause on the 18th day of July, 1896, dissolving the injunction heretofore awarded against defendants and dismissing complainant's bill of complaint, and prayed an appeal from said decree to the Supreme Court of the United States and a supersedure of said decree pending such appeal.

And it appearing to the court that this cause is one wherein is involved the construction or application of the Constitution of the United States and wherein the constitution or law of a State is claimed to be in contravention of the Constitution of the United States, and that the value of the matter in controversy in said suit exceeds the sum of $5,000.00, exclusive of interest and costs, and said complainant having offered bond in due form in the penalty of $3,000.00 required by the court, with good and sufficient surety:

Upon consideration whereof, it is ordered that said bond be received and approved; that said appeal be allowed as prayed for; that a transcript of the record and proceedings in said cause be transmitted to said Supreme Court, at Washington, D. C., and that pending the said appeal the said decree of July 18th, 1896, so far as concerns the dissolution of said injunction, be, and the same is hereby, wholly suspended and superseded.

132 THE UNITED STATES OF AMERICA:

To Panther Lumber Company, a corporation, and Jerome P. Kroll, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the sixteenth day of September next, pursuant to an appeal from a decree of the circuit court of the United States for the district of West Virginia in your favor passed in a cause in said court wherein Henry C. King is complainant and you are defendants, to show cause, if any there be, why the decree rendered against the said complainant in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-six.

J. J. JACKSON,
Judge U. S. District Court, District of W. Va.

132½ [Endorsed:] We accept legal service of the within process this 14th Sept., 1896. S. C. Graham, R. R. Henry, attorneys for Panther Lumber Company & J. P. Kroll. J. P. Kroll.

133 UNITED STATES OF AMERICA, } *To wit:*
District of West Virginia, }

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true transcript of so much of the record as was asked for by complainant in the equity cause of Henry C. King *vs.* Panther Lumber Company and Jerome P. Kroll, pending in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Parkersburg, in said district, this 26 day of September, A. D. 1896.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Endorsed on cover: Case No. 16,390. West Virginia C. C. U. S. Term No., 240. Henry C. King, appellant, *vs.* Panther Lumber Company and Jerome P. Kroll. Filed September 29, 1896.

FILED.
SEP 26 1908
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States

October Term, 1908.

No. 1

HENRY C. KING, APPELLANT,

vs.

PANTHER LUMBER COMPANY AND JEROME T. ENGEL, APPELLEES.

Appeal From the Circuit Court of the United States for the District of West Virginia.

Brief of Maynard F. Stiles for Appellant.

IN THE

Supreme Court of the United States.

October Term, 1897.

NO. 240

HENRY C. KING, APPELLANT.

versus

PANTHER LUMBER COMPANY AND JEROME P. KROLL, APPELLEES.

Appeal From the Circuit Court of the United States, for the District of West Virginia.

Brief for Appellant.

This is an appeal from a decree of the Circuit Court dissolving an injunction previously awarded, and dismissing the bill.

On the 3rd day of August, 1895, plaintiff presented his bill (p. 1) claiming ownership of the Robert Morris 500,000 acre grant, situate in part in said district, exhibiting a perfect

chain of title thereto, alleging that said land was wild and mountainous, unfit and practically worthless for agricultural, grazing and like purposes, and valuable chiefly for the heavy growth of timber thereon, on account of which complainant purchased the same at great cost, for the cutting of which timber he had made great outlay and preparation, large quantities of which timber defendants were wrongfully cutting and removing under pretended purchases of portions of said land and of the timber standing on other portions, from persons claiming same adversely to complainant, against whom, as well as against defendants, complainant had brought actions of ejectment. The bill was ancillary to such action. At the same time defendants presented their answers (p. 29–39) defendant Kroll claiming to act only as an agent of defendant Panther Lumber Company, and said Company attempting to justify the trespass complained of, upon the ground of the extensive investment it had made and want of title in complainant, charging that said tract had been omitted from the land books of the various counties in West Virginia where same was situated, for five successive years and not charged with taxes, and was therefore forfeited to the State and the title vested in the State and in the persons under whom defendant claims, by Art. XIII of the State constitution. Defendant company also claimed title by adverse possession.

Upon the bill and the answers treated as affidavits, on the same day, District Judge Jackson awarded a temporary injunction as to all said land except about 205 acres to which defendant showed apparently superior title, and set the further hearing of motion for injunction for Sept. 19, 1895, (p. 40), upon which hearing the court continued said injunction in force until the further order of the court, and permitted defendant to remove certain timber that had been cut by it, upon executing bond." (p. 42).

On the 12th day of March, 1896, defendant, Panther Lumber Company, filed a demurrer and amended answer, (p. 43), reiterating the charge of forfeiture of complainant's title and reciting the result of the trial of the action of ejectment of *King* v. *Mullins*, (now in this court, No. 157, of the present term), and complainant on the 26th day of June, 1896, filed exceptions to some of the scandalous and impertinent matter

in the answer and amended answer, (p. 49), which was afterwards stricken therefrom, (p. 79), and also filed an amended and supplemental bill (p. 51), largely in the nature of a special replication.

On the 18th day of July, 1896, the injunction was dissolved and the bill dismissed (p. 81) by Judge Jackson solely upon the ground of forfeiture, and solely upon the strength of the ruling of Circuit Judge Goff in *King* v. *Mullins*, whose construction of the constitution in that case the district judge regarded as controling his action in the present one. From this decree complainant prayed an appeal to this Court, and a supersedeas, (p. 83), which was allowed (p. 86), August 17th, 1896, and the record lodged here September 29th, 1896, the time for filing same having been duly enlarged to that time.

The paramount questions involved in the case are: whether or not the provision is the constitution of West Virginia, which forfeits tracts of land of 1,000 acres or more for non-assessment for state taxes for five successive years, is in contravention of the Constitution of the United States; whether in this record there is any competent evidence of forfeiture; and whether a forfeiture such as is charged, if there be one, is available against a subsequent bona fide purchaser for value without knowledge or notice of such forfeiture.

SPECIFICATION OF ERRORS.

The decree of the circuit court is erroneous to the injury of appellant for the following reasons:

First: The said court erred in dissolving the injunction previously awarded and dismissing complainant's bill upon the ground that the title claimed by him to the land in question was or had been forfeited to the State of West Virginia by the constitution thereof, because the provision of said constitution which purports and attempts to forfeit and divest the title out of the owner of land and vest the same in said State or in some other person when such owner shall not have been charged with state taxes on said land on the land books for any five successive years after the year 1869, is in contraven-

tion of the Constitution of the United States, particularly Art. I, Sec. X, 1, of said Constitution and Art. XIV, Sec. 1, of the amendments thereto, and because said provision is repugnant to paramount provisions of the said state constitution, to wit, Art. III., 4, 5, 9, 10 and Art. V., 1, thereof and is null and void.

Second: The court erred in holding the title of complainant or of his predecessors to be forfeited, and in dismissing the bill because thereof; because (as is alleged in the bill and not disputed by defendants, and as the fact is) no forfeiture of the title of complainant, or of those under whom he claims, to said land, has ever been decreed, adjudged, declared or determined in any proceeding for the purpose, and could not be adjudged or enquired of collaterally, as in this suit, and could only be proven in this suit, if the fact existed, by the record of an adjudication thereof in a proper, direct proceeding thereof before a competent tribunal.

Third: The court erred in holding that any forfeiture of the title claimed by complainant had occurred, because there is nothing in the pleadings or exhibits (the only proof in the case) to warrant the court in so holding, and because the proof shows that there was no forfeiture, and that none was claimed by the State, (vide auditor's certificate filed by complainant, p. 76).

Fourth: The court erred in holding that the land claimed by complainant had been omitted from the land books of the several counties wherein the same is situate since the year 1883, and that no taxes had been paid thereon by complainant or those under whom he claims, because there is no competent evidence in the case to warrant the court in so holding.

Fifth: The court erred in dissolving said injunction and dismissing said bill on the ground of the forfeiture of the title claimed by complainant, because, as is alleged in the bill and as is undisputed by defendants, complainant purchased said land for valuable consideration in good faith and without knowledge or notice of any forfeiture or pretended forfeiture or of any pretended claim or interest of said State of West

Virginia, and the said State and all others are estopped to set up title in said State against complainant.

Sixth: The court erred in dissolving the injunction and dismissing the bill, because the bill shows perfect title to the land and to the relief sought and the answer does not deny the commission of any of the acts charged against defendants, but attempts to avoid the charge by matters that, if they were true, would constitute no defense.

Seventh: The court erred in dismissing said bill, because the same was in terms ancillary to an action of ejectment then and still pending in said court, in which action alone the question of title should have been adjudicated, complainant having shown an apparently good title by his bill.

Eighth: The court erred in dismissing the bill or dissolving the injunction upon the case disclosed by the record.

ARGUMENT.

The principle questions presented by this appeal have been so recently before this Court in *King* v. *Mullins*, No. 157, of the current term, and so fully discussed in the printed arguments for plaintiff in error in that case, though very insufficiently presented by the oral argument, that I shall merely restate here the main points relied upon against the validity of the West Virginia Constitution and the propriety of the decree appealed from, with some further brief suggestions. In this connection it is but just to the learned and able district judge who entered that decree, to remark that it is manifest from its language (p. 18) that while governed by the precedent referred to, the action of the learned judge was against his own well known judgment and conviction.

This case turned upon the following provision of the State Constitution, as did the Mullins case.

ARTICLE XIII.

LAND TITLES.

1. All private rights and interests in lands in this State derived from or under the laws of the State of Virginia, and from or under the constitution and laws of this State prior to the time this constitution goes

into operation, shall remain valid and secure and shall be determined by the laws in force in Virginia, prior to the formation of this State, and by the constitution and laws in force in this State prior to the time this constitution goes into effect.

2. No entry by warrant on land in this State shall hereafter be made.

3. All title to lands in this State heretofore forfeited, or treated as forfeited, waste and unappropriated, or escheated to the State of Virginia, or this State, or purchased by either of said States at sales made for the non-payment of taxes and become irredeemable, or hereafter forfeited, or treated as forfeited, or escheated to this State, or purchased by it and become irredeemable, not redeemed, released or otherwise disposed of, vested and remaining in this State, shall be, and is hereby transferred to, and vested in any person (designating three classes of claimants with reference to possession and payment of taxes).

6. It shall be the duty of every owner of land to have it entered on the land books of the county in which it, or a part of it, is situated, and to cause himself to be charged with the taxes thereon, and pay the same. When for any five successive years after the year 1869, the owner of any tract of land containing one thousand acres or more, shall not have been charged on such books with State tax on said land, then by operation hereof, the land shall be forfeited and the title thereto vest in the State.

What importance, if any, is to be attached to the first clause of Sec. 6, requiring the land owner to have his land entered, etc., or what is properly the effect of a neglect of that duty, is not clear, except that there can be no effect upon the owner of a tract of less than 1000 acres; but it certainly would seem to have no application to the man all of whose land was properly entered upon the land books and charged with taxes at the time the constitution was adopted, for it does not provide that the owner should do this annually or at stated times. There was no reason so to provide, for the law then in force furnished ample provision, as it does now, for the annual and perpetual entering and charging of the land by the county officers, without the aid or interference of the land owner and in spite of anything he might do, when once it has been entered.

Chapter XXIX Code of 1868 contains the provisions for assessment of taxes, in force from 1863 up to and after the adoption of the present Constitution in 1872.

Sec. 6: The assessor shall apply for the official books and papers which its predecessor had, to the person in possession thereof, and if

such person fail or refuse to deliver the same, he shall forfeit one hundred dollars.

Sec. 8 provides a board of correction and equalization composed of the assessor, recorder, sheriff and county surveyor.

Sec. 9: The assessor in making out his land book, shall in all respects correct the same, as directed by the said board, or by the supervisors on appeal, and shall correct every other mistake he may discover in the original land books; and if any taxes have been omitted for a former year, he shall enter the same, with lawful interest thereon for collection.

Sec. 10: When the assessor shall ascertain that there is any land in his district which has not before been entered in his land book, or after being so entered, has from any cause been omitted for one or more years, he shall make an entry thereof and of the name of the owner, and if there be no assessment of the same, shall proceed to make such assessment.

Secs. 14, 15, 16, 18 and 20 provide for the making of lists by the clerks of the courts, the recorder of deeds and the secretary of state, of all grants, deeds, judgments, decrees, wills, etc., affecting the title to land and for the transmission of same to the assessor in March of each year, and Sec. 24 requires the assessor to transfer on the land books all the lands mentioned in said lists and reports to the persons who appear thereby to be the owners thereof.

Sec. 39: The assessor shall begin annually on the first day of April, and proceed without delay to ascertain all persons and property, real and personal, on that day subject to taxation in his district.

These and other provisions afforded a complete system by which land once coming to the knowledge of any of these officers would find its way on to the land books and would thereafter be carried on the books through all mutations of ownership year by year.

The constitution must be viewed in the light of this law, which it in no way attempted to change, and must be held to have intended that the duty of entering the land should apply to land not then on the books, and not to persons who had already discharged that duty. The assessor is required to enter lands annually: not so the owner. It was needless to make it the duty of the owner to do what was already the the duty and remained the duty of the assessor—mandatory and under penalty.

The laws in force when the constitution was adopted have been changed so that the clerk of the county court, who is the custodian of the public records, now makes up the land books, and all changes have been in the direction of amplification of the provisions and facilities for keeping lands in the hands and under the eye of the taxing power of the state. The present law is found in Chap. XXIX Code of 1891, Sec. 8 to 39 and Sec. 77, and was in force prior to 1883, and if pursued by the officers, the escape from taxation of any land that is subject to taxation is an impossibility.

At this point I request attention to the amended bill (p. 54).

At the time West Virginia was formed there were two lines of claimants of the Morris grant under claim of title from Dumas, trustee, viz, Louis Antoine des Verges de Maupertuis and Robert E. Randall, trustee, on the one hand and Anthony Lawson on the other, the title splitting about 1846 and deed to Lawson being made in 1855. The taxes on the land had been paid by Swan from 1796 to 1811, inclusive, after which time the land went into the Literary Fund for non-payment of taxes, where it remained till released by the Act of March 15th, 1838, and vested in Dumas, from which time the taxes were paid up to the time of the war, when the land appears to have gone off the books. In 1869 Randall and Maupertuis "had it entered" in Wyoming county—the whole 500,000 acres, and about the same time Lawson had the undivided three-fourths claimed by him entered on the books of Logan county as 375,000 acres and taxes back to 1865, so that the land was on the land books and charged with taxes to the extent of 875,000 acres, when the constitution was adopted. Both these claims of title were united in this appellant's grantors before his purchase. The bill (p. 34-6) traces payment of taxes up to 1883 by redemption or otherwise, but why or how the land came not to be taxed thereafter, if it was not,—by what fraud, accident or mistake—the laws of the State furnish no process to inquire and hold it immaterial to inquire, since the cause or reason could not change the fact, and it is the naked fact of five years non-assessment, and not the cause of it, that transfers the land owner's title to the State or to a stranger. A legal title may pass by a manifest and incontestible fraud, which only a court of chancery can undo; but the State of

West Virginia cannot be sued in chancery nor at law, and a fraud by which she acquires land for non-assessment is beyond redress, if her constitution is valid, for the forfeiture and transfer of title is without condition or qualification.

"When" (which is equivalent to "whenever") the land is not charged, the constitution does the rest, and this, as it seems to me, without reference to the duty of the land owner. Wherefore I contend that the forfeiture would have been no different—neither less nor more open to legal objection—if nothing had been required of the land owner. If this view is wrong, the alternative proposition is, that the offending land owner, if he own one thousand acres or more, is fined to the extent of that land and the fine collected, without judge, jury, trial or accusation. This the constitution purports to accomplish.

THE FORFEITURE PROVISION OF THE STATE CONSTITUTION CONTRAVENES THE CONSTITUTION OF THE UNITED STATES.

Art. 1, Sec. X, 1. No state shall pass any bill of Attainder, *ex post facto* law or law impairing the obligation of contracts.

This prohibition is directed at the *state* and not at the legislature merely, and affects the state in each and all its branches, departments and instrumentalities, disabling a constitutional convention and the whole people as well as the legislature.

Treating the forfeiture as a penalty for the act or omission of the land owner, the forfeiture law is a bill of attainder.

Gaines v. *Buford*, 1 Dana (Ky.) 486; *Martin* v. *Snowden*, 18 Gratt. (Va.) 100; *Norris* v. *Doniphan*, 4 Metcalf (Ky.) 426; *Cummings* v. *State of Missouri*, 4 Wall. 323-4. This court in *Cummings* v. *Missouri*, declares "a bill of attainder is a legislative act which inflicts punishment without a judicial trial," and quotes with approval *Gaines* v. *Buford*, which contains an able discussion of bills of attainder as applied to an act very like the one at bar.

The forfeiture impairs the obligation of contracts. The grant to Morris (p. 8) like other grants of that date, was without condition (except as to 4,000 acres reserved from its opera-

tion) either in the grant or the law under which it was made. It passed an absolute, indefeasible and nonforfeitable title; and the act of March 15th, 1838, "transferred to and vested in" John Peter Dumas, in trust, "All the right, title, and interest of the commonwealth or of the president and directors of the literary fund" in and to the same land.

The resumption of the grant in the manner provided by the state constitution, impares, revokes and destroys the obligation of the executed contract of conveyance between the State of Virginia and its grantee. *Gaines* v. *Buford*, 1 Dana 488-90; *Arrowsmith* v. *Burlingim*, 4 McLean 494; *Griffin* v. *Mixon*, 38 Miss. 448.

FOURTEENTH AMENDMENT.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The forfeiture is without "due process of law" or any process whatever. There is no provision in the state constitution or the state statutes in force at the adoption of the constitution, or subsequently enacted, which requires or permits any judicial or other proceedings before or afterwards, to enquire of, adjudge, decree or declare the forfeiture or divest and transfer the title. The constitution requires and permits no aid or interference from the courts: its own terms and the flight of time are all sufficient, and no court, no process or proceeding of law, no power or agency that can be invoked can aid, prevent or defeat the forfeiture and transfer of title. The court can declare the law a nullity, but short of that it can do nothing. Such a thing is not law nor process of law nor process of any kind.

No court has ever dissented from, but many have approved the language of the court in *Wynehamer* v. *The People*, 13, N. Y.

"To say, as has been suggested, that 'the law of the land' or 'due process of law,' may mean the very act of the Legislature which deprives

the citizen of his rights, privileges or property, leads to a simple absurdity."

The forfeiture is by "mere act of legislation" and is a legislative transfer of one man's property to another, which is not due process of law as that expression is used in Magna Charta, or in the federal or state constitutions. *Dartmouth College Case*, 4 Wheat, 578; *Dorman* v. *The State*, 34 Ala. 216; *Hoke* v. *Henderson*, 4 Dev. 15; *Calhoun* v. *Fletcher*, 63 Ala. 574; *Overing* v. *Foote*, 65 N. Y. 269; *Chauvin* v. *Valiton*, 20 Pac. Rep. 658; *Denny* v. *Mattoon*, 2 Allen 378; *Baker* v. *Kelley*, 11 Minn. 480; *Taylor* v. *Porter*, 4 Hill, 145; *Loan Association* v. *Topeka*, 87 U. S. 663; *Wayman* v. *Southard*, 10 Wheat, 36; *Newland* v. *Marsh*, 19 Ill. 383; *Wilkinson* v. *Leland*, 2 Pit. 657; *Groesbeck* v. *Seeley*, 13 Mich. 329; *Davidson* v. *New Orleans*, 96 U. S. 102; *Chicago B. & Q. R. R. Co.* v. *Chicago*, 166, U. S. 226 and innumerable other cases.

Not only must there be a judicial hearing, but that hearing must be provided by the law that authorizes the taking of the property—the deprivation.

Fisher v. *McGirr, et. al.*, 1 Gray, 1; *Hibbard* v. *The People*, 4 Mich., 155; *Boggs* v. *The Commonwealth*, 76 Va., 989; *Wong Wing* v. *United States*, 163 U. S., 228; *Lowry* v. *Rainwater*, 70 Mo., 152; *Loesch* v. *Koehler*, 144, Ind., 278; *Lewis Em. Dom.*, 368, et. cet.

DENIAL OF EQUAL PROTECTION OF THE LAWS.

The forfeiture applies only to tracts of 1,000 acres or more, without reference to value, character, location, condition or any circumstance but the purely arbitrary one of size. It is an arbitrary, unequal and unjust discrimination, and violates the equality clause of the Fourteenth Amendment.

Gulf, Colorado & Santa Fe Railway v. *Ellis*, 165 U. S., 150; *State* v. *Goodwill*, 33 W. Va., 179; *State* v. *Fire Creek C. & C. Co.*, 33 W. Va., 188; *State* v. *Loomis*, 115 Mo., 307; *Millett* v. *People*, 117 Ill., 294; *Low* v. *Reese Printing Co.*, 41 Neb., 127.

TAKING PRIVATE PROPERTY FOR PRIVATE USE.

Sec. 3 of Art. XIII enacts that "all title to lands in this State * * * * hereafter forfeited or treated as forfeited

* * * * * shall be, and is hereby transferred to and vested in any person," etc., designating three classes of persons with reference claim of title, possession and payment of taxes. Thus the constitution takes the title out of one person and puts it into another—takes the private property of one man and gives it to another as his exclusive private property. This has been aptly and justly characterized by this court as not being legislation but spoliation.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 226; *Davidson* v. *New Orleans*, 96 U. S. 102; *Loan Association* v. *Topeka*, 20 Wall, 664.

Such a thing has been so undreampt of that it has never been thought necessary to legislate specifically against it; *Norman* v. *Hesist*, 40 Am. Dec., 495. But it is none the less *not* due process of law. *Missouri Pacific Ry.* v. *Neb. Board of Transportation*, 164 U. S., 403; *Blood good* v. *M. & H. R. R. Co.*, 18 Wend., 56; *Varick* v. *Smith*, 5 Paige, 159; *Vanhorn* v. *Darrance*, 2 Dal., 304.

EXCESSIVE FINES AND CRUEL AND UNUSUAL PUNISHMENT.

All that is embraced in and prohibited by the Eighth Amendment was part and parcel "of the old constitutional law of the land" of England (IV. Blackstone Com. 379) and is consequently embraced in the Fourteenth Amendment, and now applies to the States under the requirement of "due process of law," which is the same as "the law of the land," as it applies to the general government under the Eighth Amendment.

Rufus Choate, in a similar case, (*Herrick* v. *Smith*, 1 Gray, 16) declared: "The forfeiture is nothing but a fine equalling in amount the value of the" forfeited property. The fine under the West Virginia constitution is the value of not less than 1,000 and possibly 100,000 acres of land, worth perhaps a million dollars, assessed without trial, notice, accusation or the production of witnesses. And the offense what? whose? *Gaines* v. *Buford*, 1 Dana, 481, opinion of Judge Nicholas.

FORFEITURE CANNOT BE DECLARED COLLATERALLY NOR EXCEPT BY A DIRECT JUDICIAL PROCEEDING.

There is no claim or evidence anywhere in the record that there has ever been any judgment or decree of forfeiture of the land in question, or any judicial proceeding to perfect or effect such forfeiture. The evidence offered is a auditor's certificate (p. 48). The position of appellees is that no judicial action is necessary, and that the question whether or not the land is forfeited, is a proper subject of original inquiry and determination in this cause.

The contention is combatted by appellant and overthrown by the authorities: *Gaines* v. *Buford*, 1 Dana 481; *Irwin* v. *Lumberman's Bank*, 2 Watts & S. 203; *Brookvill, &c., Turnpike Co.* v. *McCarthy*, 8 Ind., 392; *Barber* v. *Nelson*, 1 Little, 60; *Fairfax* v. *Hunter*, 7 Cranch, 602; *Moore* v. *Schoppert*, 22 W. Va., 282; III Blackstone Com., 358.

The auditor's certificate could not be made evidence by making it an exhibit to the answer, unless it was otherwise competent, and it can under the statute, be used only in proof of payment or non-payment of taxes upon "forfeited or delinquent land, or of their not having been entered upon the books of the assessor," Chap. 130, Sec. 5, Code 1891. The forfeiture must be proven before such evidence is offered. One would not be permitted to prove the *loss* of a deed by a copy which might be proper evidence of the contents of the lost deed, after the loss is established.

If one is to be deprived of his land without judge, jury or witnesses, upon the mere certificate of an officer, he has a right to insist upon strict construction of the statute under which such certificate is offered.

SOME PARALLEL CASES.

Some cases that have dealt with statutes so closely similar to the provision of the state constitution in question, and have discussed the principles involved, with such learning and force as to be of special value upon most or all points made in this case, and which sustain the positions here taken are, *Marshall* v. *McDaniel*, 12 Bush. (Ky.) 378; *Gaines* v. *Buford*,

1 Dana (Ky.) 481; *State* v. *Heeman*, 70 Mo. 441; *Scharf, Comr. of Land Office* v. *Tasker*, 73 Md. 380; *Eastern Land Lumber & Mfg. Co.* v. *State Board of Education*, 101 N. C. 35; *Phelps* v. *Chesson*, 12 Ired. (N. C.) 198.

THE FORFEITURE NOT A REVENUE MEASURE.

Those who have defended the forfeiture law have generally done so, first upon the theory that it is a punishment of the land owner for the monstrous crime of not seeing to it that the public officers keep his land properly charged with taxes; but realizing the legal objections to punishing a person without trial, hearing or accusation, they resolve that the forfeiture must be a tax law, which admits of rather summary enforcement. But a tax law is for the purpose of revenue and not for the enforcement of penalties. Taxation is for the support of government, not for the punishment of offenders, and does not treat the land owner as a criminal whose estate is to be confiscated rather than as a loyal subject upon whom a just and proportionate share of necessary public exactions are to be made. Trifling penalties for negligence in paying taxes that have been assessed are sometimes imposed and collected with the tax, by a sale of the property, and the courts have, with much reluctance, given sanction thereto; but in such case the penalty was a mere incident to the tax and the proceedings for collecting it, and not the sole or principal object of the law or the proceeding.

To class as a tax law or revenue law an enactment that does not lay or enforce a tax or exact or produce revenue, but merely extorts a penalty that is not intended to, and generally does not, go to the public, requires a strain that no well ordered mind can endure. Virginia and West Virginia from the beginning of their history have at all times had the usual well known methods of assessing and collecting taxes, not essentially different from those employed in other states, and forfeiture of this sort is not one of them. The Supreme Court of Virginia has so declared. Judge Joynes speaking for the court in *Martin* v. *Snowden* and *Bennett* v. *Hunter*, 18 Gratt. 139, says:

"As I have already intimated, this class of forfeitures has not been employed in Virginia as one of the usual means of enforcing the pay-

ment of taxes, but rather for the purpose of establishing titles and settling vacant and abandoned lands."

AS TO STATE USAGE.

Another prop to support the forfeiture provision of the state constitution is the assertion that it follow the long established usage of Virginia.

The above quoted words from *Martin* v. *Snowden*, were written in 1868 and referred to the Act. of Feb. 27th, 1835, the only act under which there were ever any forfeitures for non-assessment, the act of 1810 never having gone into operation by reason of the time being extended up to the time of its repeal in 1814. Forfeitures for non-payment of taxes, without sale, have sometimes been erroneously classed with forfeitures for non-assessment or non-entry; but of the latter kind there were never any in Virginia from its discovery to the present moment, except under the single act of 1835—thirty-one years before the Fourteenth Amendment prohibited such acts, which the state constitution did not, twenty-eight years before the state of West Virginia was created and thirty-seven years before her present constitution was adopted, the Fourteenth Amendment being after her creation, but before the adoption of the present constitution.

This contention of long established custom is not sustained, for if a single instance or act could establish a custom, long disuse would disestablish it; and this custom had been "honored in the breach" for nearly thirty years when the Virginias parted company, and among the laws of Virginia that the constitution of the new state continued in force, there were none for forfeiture of lands. If this or any other land had not been charged with taxes in Virginia for the whole period of time from 1838 to the present, there could have been no forfeiture; for as defendant says in its answer (p. 44-5), "the State of Virginia has no similar laws," and the defendant in the suit referred to "could not rely upon the forfeiture of plaintiff's title for non-payment of taxes or other reason, because there was no statute to sustain such contention." Indeed the part of this land lying in Virginia was not assessed in Virginia for several years after the war, the whole tract being previously

entered in Logan County, which upon division of the state, became wholly a part of West Virginia.

SUIT FOR SALE OF FORFEITED LAND.

It has been urged with surprising appearance of seriousness, that the statutory suits in chancery by the state to sell forfeited, escheated, waste and unappropriated land, and land sold to the state for taxes, which permits former owners and claimants to become parties, afford to every person a judicial hearing and due process of law; but this position can only be taken by abandoning the other, that the constitution itself is due process of law, for if it is, there is no need for anything more.

The errors in the contention are numerous and manifest. If the constitution "by operation of" itself works the forfeiture and divests and transfers the title, it deprives a person of property; and if this "operation" is not due process of law, it deprives that person of his property without due process of law, and subsequent proceedings of whatever kind avail nothing. The Fourteenth Amendment is not satisfied with a regularly conducted coroner's inquest over the remains of a man who has been unlawfully done to death under color of authority.

All these suits and all the statutes that have provided for them are and have been for the purpose, not of decreeing and effecting a forfeiture, but of selling the land that the constitution had already forfeited, or rather that had been forfeited to Virginia or sold for taxes to the one state or the other and not redeemed within one year, for there has been very little else subject to their operation. If the land is forfeited in any way, it is not in or by these suits but before they were begun, and they are to dispose of so much of the already forfeited title, if any, as has not been transferred to various claimants by sec. 3 of Art. XIII. of the constitution. If the "former owner" redeems, he does not recover that part of his land that is claimed by them.

None of the statutes of this sort nor the proceedings under them could aid the constitution, nor were they expected or intended to do so; the constitution and the forfeiture by it are valid or invalid without regard to them. The Act of 1872–3

adopted contemporaneously with the constitution and which has been held to authorize a proceeding simply to dispose of land belonging to the state, a proceeding neither *in personam* nor *in rem*, (*McClure* v. *Maitland*, 24 W. Va., 561), continued in force for ten years or more, and although subsequent and existing acts permit of parties to the suits provided for, it is to permit the determination of claims to the surplus proceeds of the sale, claims to the benefits of Sec. 3, Art. XIII, and claims to the right to redeem, etc.; but the complete forfeiture and transfer of the title of the "former owner" must previously have been accomplished by the constitution as a condition prerequisite to the institution of any suit. The suit and every thing done in it is subsequent to the *deprivation of property*.

Nor is it true, as it has been asserted, that the "former owner" can upon his own petition have a suit brought, in which he may redeem the land, or that he may mandamus any officer; for he has no right to redeem, unless his title is forfeited, and if it is forfeited, he has no interest in the land—is "as much a stranger as if he had never heard of it." So it has been held, (*McClure* v. *Maupertuis*, 29 W. Va., 641), whether rightly or wrongly, and the "former owner" has had no power but *pursuasion* to induce any officer to take action, until which action was taken and suit brought, the would be redemptioner is "out in the cold."

CONCERNING THE EFFECT OF DECLARING THE FORFEITURE LAW VOID.

As a strenuous reason why the forfeiture provision should be sustained and upheld, whether in accord with the letter or spirit of the Federal Constitution or not, is urged the assertion that many titles would be overturned by holding it invalid, it being declared that a large part of the land in the state has been forfeited by the constitution and new titles have come out of the forfeiture.

It is inconceivable that this statement should be true, and it is not. It is inconceivable that, except in rare and peculiar cases, land should improperly escape assessment, and it does not. In all the cases that have come before the Supreme Court of West Virginia, *McClure* v. *Maitland*, 24 W. Va.,

561; *Auvil* v, *Iaeger*, 24 Id., 583; *McClure* v. *Maupertuis*, 29 Id., 633; all involving large grants, and all other reported cases, not an acre of land forfeited for non-assessment or by the constitution has been concerned. All the land in those cases had been *sold to the state for delinquent taxes that had been assessed.* With forfeiture of such land neither the constitution nor this case has anything to do. All the forfeiture cases found in the state courts, except three or four now pending, deal and have dealt, with land that has been *sold* to the state for *taxes* or had been forfeited by the Act of 1835.

Two cases only, so far as my knowledge or information goes, involving this present forfeiture question, or land charged to be forfeited to West Virginia for non-assessment, have ever come before the Supreme Court of the State, and those are pending now and were argued more than a year ago; and in the circuit courts of the state there have been, so far at I am advised, in the past five years, not more than half a dozen cases, including the two now in the Supreme Court, two of which in the circuit court relate to this Morris grant and one to another Swan tract involved in *Read* v. *Dingess.* In all these cases, and except *Read* v. *Dingess*, in all the cases in the Federal Courts where this question has arisen—*Buskirk* v. *King*, 72 Fed. 22; *Bartlett* v. *Ambrose*, 78 Fed., 839; I have been of counsel, and I challenge the assertion that, aside from this Morris grant and the McClary grant (*Read* v. *Dingess*) there is to be found any considerable quantity of land that is within the operation of sec. 6, Art. XIII.

The attempt has been made to treat land sold to the state for taxes and not redeemed within five years as forfeited for *non-assessment* for five years, and the non-assessed land that has alarmed some people, is of this sort. But that position has been lately disposed of by the Circuit Court of Appeals, *Sayers* v. *Buckhardt*, 85 Fed. 247, which holds that such land cannot be forfeited for non-entry because of the statute prohibiting the entry.

The overturning of titles is done by the forfeiture law,—this court can but turn them back and let them be regulated by due process of law.

The present defendant is a fair sample of the "citizens who are to be driven from their homes," etc. To some of the

land and timber that this lumber company has bought it has doubtless good title by prescription; to the rest it has none, unless the State is permitted to make a donation of appellant's title, which neither any state policy or supposed exigency nor anticipated consequence can justify or this court permit, against the letter or the spirit of the Federal Constitution; for this court has said (Ex Parte Milligan 4 Wall. 120):

"The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection, all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences ever was invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

BONA FIDE PURCHASE.

Complainant's amended bill (p. 55-6) alleges that the record of forfeited lands which the law requires the auditor to keep and which he has kept from 1883 and earlier to date, does not show the land in question or any part of it to be forfeited, and that complainant had no knowledge or notice that the land was or was claimed or supposed to be forfeited, and that he purchased same in good faith for upwards of $300,000 in reliance upon the public records and the fact that the land had been for some twenty years up to a short time before his purchase, a trust estate under the management of the U. S. Circuit Court. This allegation is not disputed by defendants. He also alleges that upon discovering the claim of forfeiture he made every offer and effort to pay all taxes, but the same was refused.

If the proper reports and records of the pretended forfeiture had been made, as required by the Code (Chap. CV, 1; Chap. XXXI., 39) it may be presumed that complainant would have become advised of the claim in time to decline the purchase, but the State having failed, through her agents, to warn complainant, she is estopped now to claim the land, and defendants are estopped to the same extent.

Fletcher v. *Peck*, 6 Cranch, 122, 3, 9; *The Bank* v. *Poitiaux*, 3 Rand, 146; *Eastern Land & Mfg. Co.* v. *State Board of Education*, 101 N. C., 46; *State* v. *Flint, &c., R. R. Co.*, 89 Mich.

481, and many cases cited; Bigelow on Estop, 349; *U. S.* v. *Lochlin*, 30 Fed., 147; *Clark* v. *U. S.*, 95 U. S., 539.

INJUNCTION.

No question was made that injunction would issue upon such a bill as the one in this case, pending an action of ejectment. That question came up upon the motion for injunction and the case was held to be a proper one, the question being well settled and sustained by the authorities. *Buskirk* v. *King*, 72 Fed., 22; *King* v. *Stuart*, 84 Fed., 546; *Ulman* v. *Ritter*, 72 Fed., 1000; *Wood* v. *Braxton*, 54 Fed., 1005; *Ehrhardt* v. *Boaro*, 113 U. S. 537.

The injunction could be dissolved or the bill dismissed, only for total failure of complainant's title, the determination of which should have been left to the action of ejectment then pending.

JURISDICTION.

In this case the bill, by amendment, disclosed the constitutional question, and the amendment relates back to the commencement of the suit; and this case is not open to the objection taken to No. 157, if there by any force in it.

It is submitted that the bill and amended bill of complainant and the whole record disclose a just and meritorious case on the part of appellant, and the decree appealed from should be reversed and the provision of the state constitution complained of should be held to be invalid.

MAYNARD F. STILES,
Counsel for Appellant.

KING *v.* PANTHER LUMBER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

No. 240. Argued April 28, 1898. — Decided May 31, 1898.

King v. *Mullins*, *ante*, 404, followed.

THE case is stated in the opinion.

Mr. Maynard F. Stiles for appellant.

No appearance for appellee.

MR. JUSTICE HARLAN delivered the opinion of the court.

This was a suit in equity by the appellant, a citizen of New York, against the appellee, a corporation of West Virginia, and one Kroll, a citizen of the latter State. Its object was to obtain a decree enjoining the defendant from cutting and removing timber from a certain tract of land in West Virginia, of which the plaintiff King claimed to be the owner.

The defendant corporation denied the plaintiff's ownership of the land, and asserted title in itself.

Opinion of the Court.

The land in dispute is a part of a tract purporting to contain 500,000 acres, and which was patented in 1793 by the Commonwealth of Virginia to Robert Morris, assignee of Wilson Cary Nicholas. It is the same patent which is referred to in the opinion in *King* v. *Mullins*, just decided, *ante*, 404.

It appeared from the pleadings and exhibits in the cause that the lands in controversy were not entered upon the proper land books for taxation or charged with taxes for any year from 1883 to 1895, inclusive.

The final order in the cause was in these words: "It having been held by this court in the case of *H. C. King* v. *M. B. Mullins et als.*, recently tried in this court, the honorable Circuit Judge presiding, that such omission of said land from the land books operated to forfeit and divest the title to said tract of land and vest the same absolutely in the State of West Virginia, under the provisions of the constitution of said State, before the purchase of the same by complainant, and that therefore complainant has no title to said land, the court is of the opinion to dissolve said injunction, reserving the right to render and file herein an opinion in writing upon said motion. It is therefore ordered, adjudged and decreed that the said injunction be, and the same is hereby, dissolved, and that the said bills be dismissed, and that the defendants recover of the complainant their costs."

The controlling questions in this case are the same as those decided in the case of *King* v. *Mullins*, *ante*, 404. For the reasons therein given, the judgment of the Circuit Court is

Affirmed.